SULTAN CITY COUNCIL

AGENDA ITEM COVER SHEET

ITEM NUMBER: Public Appeal Meeting
Caleb Court Planned Unit Development
and Preliminary Plat Application

DATE: January 10, 2008

SUBJECT: Conduct Public Appeal Meeting for the Freed, LLC - Caleb Court Planned Unit Development and Preliminary Plat Application

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:
The issue before the City Council is to conduct a Public Appeal Meeting to consider an Appeal by Freed, LLC Caleb Court Planned Unit Development and Preliminary Plat Application (Attachment 1) in accordance with SMC 2.26.15. (B) (Attachment 2).

The actions the City Council may take at the Public Meeting under SMC 2.26.15.(B) are:

1. The Council may concur with the findings and conclusions of the Hearing Examiner and affirm the Hearing Examiner's decision; DENY Planned Unit Development without prejudice: RETURN preliminary subdivision for modification;

2. The Council may determine to hear the Appeal at Public Hearing.

In those instances in which the Council affirms the Hearing Examiner's decision or remands the matter to the Hearing 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.

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.

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 Hearing Examiner and all written and oral testimony presented at the Council hearing. All testimony at any public hearing shall be taken under oath.

SUMMARY:
The Hearing Examiner conducted an Open Record Hearing on October 9, 2007 for Freed, LLC - Caleb Court Planned Unit Development and Preliminary Plat Application. Located at 803 High Avenue, west of the present terminus of Salmon Run North. The Hearing Examiner's Report and Recommendation dated November 13, 2007, recommended Denial of the Planned Unit Development without prejudice: RETURN preliminary subdivision for modification (Attachment 2) If the Council concludes that the the proposal meets all requirements for approval, then the Examiner would recommend that approval be SUBJECT TO THE ATTACHED CONDITIONS.

Sultan Municiapl Code (SMC) Section 2.26.150 (Attachment 4) requires scheduling an Open Public Meeting for the City Council to consider the Appeal no sooner than 21 nor longer than 35-calendar days from the date the Appeal was filed. The next available City Council Meeting to consider this Appeal would have been at the second 2007 December City Council meeting on the 27th. At the City's request the Applicant agreed to an extension until the January 8, 2008 Council Meeting. (Attachment 2)

FISCAL IMPACT:
Staff time in preparing Public Notices and Reports for the Public Meeting.

RECOMMENDED ACTION
Conduct Public Meeting and thereafter set a Closed Record Hearing for the Freed, LLC Caleb Court Planned Unit Development and Preliminary Plat for Janaury 24, 2008 at 6:00 p.m.

COUNCIL ACTION:

DATE:

Attachment 1 - Freed LLC Appeal
Attachment 2 - Hearing Examiner's Recommendation
Attachment 3 - Meeting extension acceptance
Attachment 4 - SMC 2.26.150

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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SULTAN, WASHINGTON

In Re: CALEB COURT	FFPUD06-001 FREED LLC'S APPEAL OF THE HEARING EXAMINER'S DENIAL OF PLANNED UNIT DEVELOPMENT

I. RELIEF REQUESTED

Applicant Freed LLC ("Freed"), respectfully requests the Council reverse the Examiner's recommendation of denial without prejudice of the Caleb Court PUD based on right-of-way reduction, cul-de-sac length and compliance with Concurrency Management System.

Specifically, Freed requests:

1. That the Council find that: a.) the Caleb Court proposed right-of-way reductions are appropriate in that they are consistent with SMC 16.10.120(B)(4)(b) as well as the previously approved and immediate adjacent Salmon Run North; b.) the proposed cul-de-sac length meets the public interest in that in provides safety and privacy for the residents of Salmon Run North and the proposed Caleb Court development and alternative intersections are not safe or appropriate; and c.) that both the Police Services Agreements proposed by

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Attachment 1

Freed meet the Concurrency requirements of SMC 16.108 and are consistent with previous agreement submitted and approved by the City.

II. EVIDENCE

This Motion relies upon and incorporates the evidence and materials submitted in these proceedings to date.

III. ANALYSIS

Appeals of the Examiner's decision are authorized pursuant to SMC 2.26.140.

A. The Caleb Court Project proposed right-of-way reductions are consistent with SMC 16.10.120(B)(4)(b) as well as the previously approved and immediate adjacent Salmon Run North

The Examiner's decision states that Freed's proposed right-of-way reductions should not be allowed because, "This concept does not seem to be what SMC 16.10.120(B)(4)(b) is all about". But the plain language of SMC 16.10.120(B)(4)(b) states that, "Right-of-way width and street roadway widths ***may also be reduced***, especially where it is found that the plan for the PUD provides for the separation of vehicular and pedestrian circulation patterns and provides for adequate off-street parking facilities." [Emphasis added]. The code clearly authorizes the proposed reductions in right of way widths (street width is not at issue here) as long as the proposal is part of a PUD approved by the City. The modifier "especially" does not suggest that *only* those projects that embody these characteristics may be included but rather that those projects should be especially favored. The Examiner simply misreads the statute by stating that, "Right of way width reduction in a PUD is **available only where** separation of vehicular and pedestrian traffic is proposed and where adequate off-street parking is provided." [Emphasis added]. Indeed the existing Salmon Run North project immediately adjacent to Caleb Court contains extremely similar right-of-way deviations, which is understandable as these are explicitly permitted under the Code for these types of developments. The Examiner does not articulate any meaningful difference, either in application or under the SMC, between the existing Salmon Run Development and the proposed Caleb Court.

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B. **The proposed cul-de-sac length meets the public interest in that in provides safety and privacy for the residents of Salmon Run North and the proposed Caleb Court development and alternative intersections are not safe or appropriate**

The Examiner focuses exclusively on the length of the proposed Caleb Court cul-de-sac as his rationale for denying the proposal. The Examiner fails to consider that an extended cul-de-sac provides significant privacy and pedestrian safety advantages to the residents of Salmon Run North and the proposed Caleb Court. Moreover, there is no supporting documentation or testimony provided to support the contention that this cul-de-sac would be a safety hazard with respect to emergency vehicle access and Freed has demonstrated that other jurisdictions have applied a similar standard without such concerns becoming an issue. The issue of the practical difficulty in connecting the street has already been addressed by the City in their determination that the cul-de-sac was appropriate. The observation, that the Examiner highlighted in his decision, that other parcels may one day develop is insufficient to outweigh the public interest in safe pedestrian streets and functioning intersections.

C. **That both the Police Services Agreements proposed by Freed meet the Concurrency requirements of SMC 16.108 and are consistent with previous agreement submitted and approved by the City.**

The Examiner seeks to deny the Police Services Agreement proposed by Freed and accepted by the City because the Examiner states that there is no way that any Police Services Agreement, on its own, can be acceptable to meet with adopted LOS for police services. This misunderstands the role of the Examiner and the project approval process vis-à-vis the provision of essential City services. The Examiner proposes that such agreements would only be acceptable if the City also obligates itself to increase taxes before approval of the final plat (see p. 16 Section 8 of the Hearing Examiner Recommendation). The City has appropriately decided in this instance, and many others before it, that the developer should obligate himself to commit funds to pay for additional police services required by the development. The Examiner asserts that developers should be required to pay for the additional burden their

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developments place on the system as well as address any existing shortfalls that exist prior to their arrival in the City. The appropriate level of police services and how to fund the same is essentially legislative in nature and is best left to the Council and not the Examiner. If the City Council determines that additional revenues are required for law enforcement that is a decision for the Council to make in consultation with its citizens, not at the behest of the Examiner. The City and the Council are well within their rights to determine the most appropriate way to provide for emergency services is to ask the developer to agree to pay fees to address the additional burden their particular development will place on the City.

IV. CONCLUSION

For the foregoing reasons, Freed respectfully requests that the Council reject the Examiner's decision, find that Caleb Court is compliant with the SMC and approve the PUD.

DATED this 26th day of November, 2007.

THE NORTH CREEK LAW FIRM

By: _____
Mark C. Lamb, WSBA #30134
Attorney for Applicant Freed LLC

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BEFORE the HEARING EXAMINER of the
CITY of SULTAN

RECOMMENDATION

FILE NUMBER:	FPPUD06-001
APPLICANT:	Freed, LLC [1]
TYPE OF CASE:	Preliminary Planned Unit Development subdivision (*Caleb Court*), including requests to reduce right-of-way and pavement width and to extend cul-de-sac length
STAFF RECOMMENDATION:	Approve subject to conditions
SUMMARY OF RECOMMENDATION:	DENY Planned Unit Development without prejudice; RETURN preliminary subdivision for modification
DATE OF RECOMMENDATION:	November 13, 2007

INTRODUCTION

Freed, LLC (Freed), 14704 100th Avenue NE, Bothell, Washington 98011, seeks preliminary approval of *Caleb Court*, a 16 lot single family residential Planned Unit Development (PUD) subdivision of a 2.71 acre site zoned Moderate Density (MD).

Freed filed the application on October 27, 2006. [2] (Exhibit 7 [3]) The Sultan Department of Community Development (DCD) deemed the application complete on January 17, 2007. (Exhibit 3) On October 15, 2007, Freed filed a request for approval of an 850 foot long cul-de-sac, 550 feet longer than allowed by the adopted Design Standards. (Exhibit 24)

The subject property is located at 803 High Avenue, west of the present terminus of Salmon Run North.

The Sultan Hearing Examiner (Examiner) viewed the subject property on October 9, 2007.

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1 Correct, legal name of applicant confirmed by applicant during the open record hearing. (Testimony of Joshua Freed)

2 This application was never subject to the PUD moratorium enacted by Ordinance No. 884-05: The moratorium ran from August 19, 2005, through February 18, 2006.

3 Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Recommendation is based upon all documents in the record.

Attachment 2

The Examiner convened an open record hearing on October 9, 2007. DCD and Freed gave notice of the hearing as required by the Sultan Municipal Code (SMC). (Exhibits 6 and 12)

The following exhibits were entered into the hearing record during the October 9, 2007, hearing:

Exhibit 1:	Master Application Binder dated September 13, 2007
Exhibit 2:	Site Plan dated September 14, 2007
Exhibit 3:	Determination of Completeness dated January 24, 2007
Exhibit 4:	SEPA DNS dated August 10, 2007
Exhibit 5:	Affidavit of Mailing – Notice of Application dated March 20, 2007
Exhibit 6:	Affidavit of Publication – Notice of PUD Hearing dated September 14, 2007
Exhibit 7:	Staff Report dated September 14, 2007
Exhibit 8	Development Agreement dated October 1, 2007
Exhibit 9:	Certificate of Concurrency dated October 2, 2007
Exhibit 10:	Doris Bughi Comment Letter dated October 5, 2007
Exhibit 11:	Leah Lavigueure e-mail dated October 9, 2007
Exhibit 12:	Affidavit of Mailing Public Notice dated September 26, 2007
Exhibit 13:	Tab 3 Page 3 of 4 – Open Space
Exhibit 14:	Proposed Site Conditions dated October 19, 2006
Exhibit 15:	Site Plan dated October 2, 2007
Exhibit 16:	Landscape Plan last revision date October 20, 2007
Exhibit 17:	Staff Report dated 10.5.07
Exhibit 18:	Resolution 07-22A George Town homes CUP dated September 13, 2007

Freed requested that the hearing be continued to a later date to allow consideration of revised plans (Exhibits 15 and 16) which had been submitted less than 15 days prior to the hearing date. (See Hearing Examiner Rule of Procedure 216.) The Examiner continued the hearing to November 1, 2007. DCD and Freed gave additional notice of the continued hearing. (Exhibits 25 – 27)

The following exhibits were entered into the hearing record during the November 1, 2007, hearing:

Exhibit 19:	Staff Report dated October 15, 2007
Exhibit 20:	Developer Agreement dated October 17, 2007
Exhibit 21:	Resolution 07-19 Hammer Plat dated August 23, 2007
Exhibit 22:	Snohomish County PDS Memo dated October 18, 2007
Exhibit 23:	Re-Submitted Binder received October 15, 2007
Exhibit 24:	Letter from Site Development dated October 12, 2007, Re: request for modification from Road Standards
Exhibit 25:	Affidavit of Posting dated October 15, 2007

Exhibit 26:	Affidavit of Mailing of Public Notices dated October 17, 2007
Exhibit 27:	Affidavit of Publication
Exhibit 28:	E-mail letter from *Salmon Run North* Homeowners Association dated October 24, 2007
Exhibit 29:	E-mail letter from Leah Lavigueure dated October 31, 2007

During the November 1, 2007, hearing, the Examiner asked Freed to provide copies of water and sewer availability letters which were mentioned in record documents but which had not been included in the record. Freed provided the letters to the Hearing Clerk; the Examiner inadvertently overlooked officially announcing their entry into the record. Those letters are assigned exhibit numbers as follows:

Exhibit 30:	Water system availability letter dated November 30, 2006
Exhibit 31:	Sewer system availability letter dated November 30, 2006

The action taken herein and the requirements, limitations and/or conditions recommended for imposition by this recommendation are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take and recommend pursuant to applicable law and policy.

ISSUES [4]

Does the application meet applicable criteria for preliminary subdivision and preliminary PUD approval?

Unlike many recent PUD subdivision applications, *Caleb Court* meets the PUD location criteria in SMC 16.10.110(B), including particularly the connection to a pedestrian/bicycle circulation system (sidewalks exist throughout the neighborhood) and the transit facilitation requirement (a bus route runs along High Avenue).

Freed, like the applicant in the recent *Greens Estates* application (FPPUD05-001), seeks major reduction in right-of-way width coupled with easements for sidewalks and planting strips and reduced front yard setbacks. The Examiner recommended that the *Greens Estates* PUD be denied without prejudice and preliminary subdivision application returned for modification, in part because of the right-of-way reduction issue.

> This concept does not seem to be what SMC 16. 10.120(B)(4)(b) is all about. The Examiner asks the Council to carefully consider this issue and include within its action a ruling on acceptability of the concept and guidance for its future application: <u>If it is approved here, it</u>

[4] Any statement within this section deemed to be either a Finding of Fact or a Conclusion is hereby adopted as such.

> will likely reappear in many future applications because of its ability to increase lot yield with no other apparent public benefit or private cost.

[FPPUD05-001, Hearing Examiner Recommendation, September 19, 2007, p. 19, Conclusion 8, emphasis added; Reconsideration denied October 4, 2007] As of the date of this writing, the Examiner's *Greens Estates* Recommendation has yet to come before the Council. As the Examiner predicted in *Greens Estates*, the same right-of-way concept is being presented in another case. And again, the Examiner strongly believes that if this right-of-way concept is to be proposed in Sultan on a regular basis, it needs to be overtly considered by and approved by the Council, not allowed to dribble in under the radar, so to speak. Since the Examiner lacks any Council guidance on this issue (through the unfortunate coincidence of timing), the Examiner will again reject the concept so that the Council may give it the serious consideration it requires during its consideration of this Recommendation.

Two other issues are central to this Recommendation and lead to rejection of the current proposal: Cul-de-sac length and compliance with Chapter 16.108 SMC, Concurrency Management System. [5] The current proposal does not meet code or public interest considerations in either area.

This Recommendation will focus on those three issues and on the concerns of the neighbors.

FINDINGS OF FACT

1. The hearing record contains two application "binders," each containing 13 identical subject matter tabs (Exhibits 1 and 23); the record also contains two versions of a Police Services Agreement (Exhibits 8 and 20), three versions of proposed development plans (Exhibits 2, 15, and 23.6a), three versions of the proposed landscape plan (Exhibits 1.6b, 16, and 23.6b), and three versions of the DCD Staff Report (Exhibits 7, 17, and 19). Except where necessary to reference an historical document not contained in the later submittal, this Recommendation considers Exhibit 23 to be the application; except where necessary for comparison purposes, this Recommendation evaluates only the latest submittals: Exhibits 20, 23.6a, 23.6b, and 19, respectively.

2. The *Caleb Court* site consists of two abutting, rectangular parcels, each containing a single family residence. The parcels together create a site which is approximately 300 feet wide (east-west) by 400 feet deep (north-south). (Exhibit 23.6a {Sheet C2.0}) The site lies about 250 feet north of High Avenue and is separated from High Avenue by three parcels, each of which has frontage on High Avenue. (Exhibit 23.8 {unnumbered p. 5}) The two parcels share a 30 foot wide ingress, egress, and utilities easement across Tax Parcel 3-153 (the Bughi property) south to High Avenue. (Exhibits 10,

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5 At the close of the October 9, 2007, hearing, the Examiner asked DCD to request a formal legal opinion from the City Attorney regarding interpretation of Chapter 16.108 SMC. The City Attorney declined for legal reasons which the Examiner fully understands and respects.

23.6a {Sheet C1.0}, and 23.8 {unnumbered pp. 5 and 7}) Salmon Run North, an opened, constructed, and maintained City street, terminates against the east side of the *Caleb Court* site approximately 100 feet south of the north property line. (Exhibit 23.6a {Sheet C1.0})

The site is essentially flat with the remnants of a shallow, old river oxbow cutting through from the northwest corner to the mid-point of the east property line. Grasses are the dominant ground cover; the site contains a few scattered trees. Near-surface soils are silty; those deeper than about four to eight feet below the surface are quite gravelly. (Exhibits 23.6a, 23.9, and 23.11)

3. Surrounding uses are varied:

A. Sultan High School lies to the north. The school athletic fields are directly across the north property line. The site is separated from the school property by a chain link fence. (Exhibits 19 and 23.6a {Sheet C2.0})

B. *Nelson's First Addition to Sultan* (*Nelson's Addition*), a nine lot single family residential subdivision served by Salmon Run North, borders the entire east side of the *Caleb Court* property. Eight lots in *Nelson's Addition* are on the east side of Salmon Run North; only *Nelson's Addition* Lot 1 (located in the northwest corner of the Salmon Run North/High Avenue intersection) is on the west side of Salmon Run North. The remainder of the west side of Salmon Run North in *Nelson's Addition* consists of Tract 999, an open space/drainage tract. The lots in *Nelson's Addition* are approximately twice the area of the proposed *Caleb Court* lots. (Exhibits 23.6a {Sheets C1.0 and C2.0} and 23.8 {Unnumbered p. 5})

Salmon Run North is a dedicated City street consisting of 40 feet of pavement (two 12 foot travel lanes and two 8 foot parking lanes), with curb and gutter, a planter strip, and a sidewalk on each side. Salmon Run North extends north from High Avenue for about 430 feet where it makes a radius turn to the west (R=65 feet) for an arc length of about 100 feet to a temporary dead-end against the east side of the *Caleb Court* site. Salmon Run North is thus presently approximately 530 feet long. Salmon Run North presently serves the nine lots in *Nelson's Addition* plus one metes and bounds lot (located in the northeast corner of the Salmon Run North/High Avenue intersection). (Exhibits 23.6a {Sheet C1.0} and 23.8 {Unnumbered p. 5})

C. Three acreage parcels, each fronting on High Avenue, lie south of the *Caleb Court* site. The 30 foot wide easement encumbers the center of those parcels (the Bughi property). (Exhibits 23.6a {Sheet C1.0} and 23.8 {Unnumbered p. 5})

D. The George 6-plex will occupy the 1.4 acre parcel abutting the west side of the *Caleb Court* site. The Council approved the George application (CUP06-004 and BLA06-004) on September 13, 2007. (Exhibits 18 and 19 and official notice of second file number)

The George 6-plex parcel lies approximately 200 feet north of High Avenue and will be accessed via an easement over the east 30 feet of the parcel separating it from High Avenue (also owned by George). (Exhibit 23.8 {Unnumbered p. 5} and official notice: George May 4, 2007, Hearing Examiner Recommendation, Finding 1, adopted by the Council through Exhibit 18)

4. The *Caleb Court* site is designated Moderate Density Residential on the adopted Comprehensive Plan (Plan). (Exhibit 19, p. 5) The Council has zoned the site Moderate Density (MD) to implement the Plan. (Exhibit 19, p. 1) The MD zone allows single family residences at a maximum density of 6.0 dwelling units per acre with standard minimum lot area, width, and depth of 7,200 square feet (SF), 60 feet, and 80 feet, respectively. Standard minimum front, side, and rear setbacks in the MD zone are 20 feet, minimum 5 feet total of 15 feet, and 20 feet, respectively. PUDs in the MD zone are allowed reduced standards: minimum lot area, width, and depth are 4,000 SF (4,500 SF average), 40 feet, and 100 feet, respectively; minimum front, side, and rear setbacks are 20 feet, 5 feet, and 20 feet, respectively. [SMC 16.12.020(C), Table of Dimensional and Density Requirements] Further lot area and front, side, and rear setback reductions are permissible if the PUD application meets certain requirements. [SMC 16.10.120(B)(1) and (2)]

5. Freed proposes to subdivide the property into 16 lots for single family residential houses using the PUD overlay provisions of the SMC. The proposed density is 5.89 dwelling units (lots) per acre. The smallest proposed lot is 4,000 SF; the average lot size is 4,756 SF. All the lots will be served by a 330 foot extension of Salmon Run North, ending as a permanent cul-de-sac approximately 60 feet north of the south property line. 24,833 SF (21% of the site) of open space is proposed to be preserved in tracts located in the northwest and southwest corners of the site. The easterly of the two existing residences is proposed to be preserved on Lot 15; the other residence may be moved onto a proposed lot, removed from the site, or demolished. (Exhibit 23.6a and testimony)

Proposed houses reflect a modern Craftsman design, are two stories, and contain approximately 2,000 to 2,150 SF. (Exhibit 23.13)

6. Freed's proposal is dependent upon a number of deviations from adopted standards under SMC 16.10.120(B):

A. Street right-of-way width and section. Adopted standards call for a 60 foot wide right-of-way containing a paved, two-way street with parking lanes, curbs and gutters, planter strips on the street edge, and concrete sidewalks on both sides. [Design Standards and Specifications

(Design Standards) § 1.09] Freed proposes a 35 foot wide right-of-way which would contain two paved travel lanes, no parking lanes (four parking spaces are proposed adjacent to Proposed Lot 11 which would essentially be carved out of the easterly travel lane, reducing the street to approximately 1.5 lanes wide in that area), curbs and gutters, concrete sidewalk, and planter strips. Because of the reduced width right-of-way, all but one foot of the sidewalks and the entirety of the planter strips would lie outside of the right-of-way. The remainder of the sidewalks would lie within a 4 foot wide sidewalk easement; the entirety of the planter strip would lie within the 10 foot wide utility easement paralleling the right-of-way. (Exhibit 23.6a {Sheets C1.0 and C3.1})

B. Cul-de-sac length. Section 1.09 of the Design Standards provides that no cul-de-sac may exceed 300 feet in length. Freed's proposal would result in creation of a 760 foot long cul-de-sac (measured from High Avenue to the radius point of the cul-de-sac). [6] Freed has offered to create a "bubble" at the end of present Salmon Run North to serve as a mid-point turnaround area. (Exhibit 23.6a {Sheet C1.0})

C. Front setbacks. Freed proposes an 18 foot setback from the back edge of the sidewalk (equivalent to a 22 foot setback from the front property line) for garages and a 15 foot setback from the property line (equivalent to 11 feet from the back edge of the sidewalk) for other portions of buildings. (Exhibit 23.6a {Sheets C1.0 and C3.1})

D. Rear setbacks. Freed proposes to reduce rear setbacks to 10 feet. To offset that reduction, Freed proposes to enclose the entire development with a six foot tall, solid board fence. (Exhibits 23.6a {Sheet C1.0} and 23.6b)

7. *Caleb Court* meets the locational requirements of SMC 16.10.110(B). (Exhibit 19, p. 5)

8. *Caleb Court* meets minimum permissible lot area, width, and depth requirements. The proposed density is just under the maximum permissible. (Exhibit 19, pp. 5 – 7) However, since the front setback is legally measured from the property line/edge of the street right-of-way, the effective front setback will be less than the code-allowed 15 feet.

9. The *Caleb Court* house designs include built-in two-car garages. (Exhibit 23.13) That provision meets the SMC requirement for two on-site parking stalls. The proposed 18 foot setback from the back edge of the sidewalks would provide two additional parking spaces on each lot. The street design is such that on-street parking is impossible without reducing the travel lanes to less than two.

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6 Freed's request for cul-de-sac length modification states that the resulting cul-de-sac would be 850 feet long. (Exhibit 24) The length stated by the Examiner in this Finding is based upon measurement using Exhibits 23.6a and 23.8. Regardless of which figure is more accurate, the reality is that the proposal would result in a cul-de-sac more than twice the permissible length.

Freed proposes four on-street parking stalls (Exhibit 23.6a {Sheet C1.0}) and verbally offered to provide up to four additional parking stalls within open space Tract 999 at the end of the cul-de-sac (Testimony).

10. The proposal meets SMC open space and recreation requirements. (Exhibit 19, pp. 10 and 11)

11. Sultan's State Environmental Policy Act (SEPA) Responsible Official issued a Mitigated Determination of Nonsignificance (MDNS) on August 10, 2007. (Exhibit 4) The MDNS was not appealed.

The two mitigation measures within the MDNS require compliance with City regulations and compliance with Chapter 17.08 SMC, Flood Damage Prevention. [7] The second mitigation measure pertains to the shallow swale which runs through the site. Freed intends to fill that swale, effectively removing it from the designated flood plain. (Exhibit 23.6a {Sheet C2.0}) The MDNS indicates that "the City may remove the flood fringe designation from the site in accordance with FEMA procedures." (Exhibit 4, Attachment A, # 2)

12. Subdivision PUD applications are development permits. [SMC 16.120.050] *Caleb Court* is not categorically exempt from SEPA threshold determination requirements. (Exhibit 4) Therefore, *Caleb Court* is subject to the concurrency requirements of Chapter 16.108 SMC. [SMC 16.108.020]

The Examiner can not recommend and the Council can not approve a development application which does not demonstrate compliance with the concurrency requirements of Chapter 16.108 SMC. [SMC 16.108.060]

General Findings of Fact and Conclusions regarding compliance with Chapter 16.108 SMC are contained in Appendix A hereto, which is incorporated by reference as if set forth in full.

13. DCD's concurrency determination is to be considered part of its recommendation to the Examiner. [SMC 16.108.040(B)] DCD issued a Certificate of Concurrency (Certificate) for *Caleb Court* on October 2, 2007. DCD finds the application concurrent with respect to all facilities regulated under Chapter 16.08 SMC: Arterial roadways, other roadways, potable water, wastewater, police, and parks and recreation. (Exhibit 9)

The Certificate admits that the City presently fails to meet its established police services Level of Service (LOS) standard.

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7 The first mitigation measure requires the proposal to "meet regulations and permit requirements of the City of Sultan." This mitigation measure is technically redundant since all development projects must comply with all adopted City regulations. The second mitigation measure is also technically redundant since Chapter 17.08 SMC is one of the "regulations and permit requirements of the City of Sultan" required by the first mitigation measure to be met.

> The 2004 Comprehensive Plan LOS is 2.6 Uniformed Officers per 1,000 residents. The City has six (6) uniformed officers. The current deficit is 5.78 Uniformed Officers, which is based on the City of Sultan's Office of Financial Management (OFM) July 1, 2007 population of 4,530. Police Services are funded through the City's General Fund and other sources. Increased tax revenue associated with the development will work towards offsetting incremental increases of police services as needed to accommodate the City's population. Police service improvements scheduled to maintain the City's adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan. In order to maintain an acceptable level of service for police the applicant is providing a Development Agreement to guarantee the LOS for police services.
>
> The City Council, in the plats/developments of Skoglund Estates, Steen Park, Cascade Breeze, Vodnick Lane, A J's Place, Twin Rivers Ranch Estates, and George Town Home Development, has determined that if the applicant for a subdivision/development enters into a Developer Agreement to establish concurrency, the application can be deemed Concurrent as it relates to Police Services. The Applicant has provided such an Agreement, committing to pay $18,395.00 to the City of Sultan to mitigate their impacts on the Police Level of Service.
>
> The City Council in Resolution No. 06-12 requested the Hearing Examiner to consider their previous actions and interpretations with regards to Police Level of Service (LOS). Previous actions have involved: Steen Park, Cascade Breeze, Skoglund Estates, AJ's Place, Vodnick Lane, Twin Rivers Ranch Estates, and George Town Home developments.

(Exhibit 9, p. 2) The statement "Police service improvements scheduled to maintain the City's adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan" is factually incorrect. The latest adopted Capital Facilities Plan (CFP) is Appendix D to the 2004 Comprehensive Plan, dated November 22, 2004. (Official notice) The discussion of the Police Department in the CFP mentions a new station, but does not address staffing (not unexpected since staffing is not a capital facility). (2004 Comprehensive Plan, Appendix D, p. VIII-19)

14. Freed has submitted two different versions of a Developer Agreement to Establish Concurrency (Police Services Agreement): One prior to the October 9th hearing; the other after. (Exhibits 8 and 20, respectively) Both agreements offer to pay a fractional, proportional share of the cost of one police officer for one year plus a modest amount "as a contribution to a reserve for future years of service." (Exhibit 8 or 20, p. 2)

The first Police Services Agreement is based on 16 total lots, a population impact of 43 persons, an annual cost for one uniformed officer of $110,878, and $193.70 per unit for the reserve contribution. (Exhibit 8) Under that version, the total *pro rata* share offered is $18,395.00.

The second Police Services Agreement is based on 14 new lots, a population impact of 38 persons, an annual cost for one uniformed officer of $114,537 (adjusted upward for inflation), and $193.70 per unit for the reserve contribution. (Exhibit 20 and testimony) Under that version, the total *pro rata* share offered is $16,878.00.

15. DCD recommends approval of *Caleb Court* subject to 24 conditions. (Exhibit 19, pp. 16 – 18) DCD indicated that the typical house plans (Exhibit 23.13) should also be included in the list of approved plans in Recommended Condition 1. DCD also asked that Recommended Condition 24 (which had been added by DCD subsequent to the October 9th hearing) be revised: "The ~~proposed development~~ applicant shall ~~be subject to~~ file and record the voluntary Police ~~Level of~~ Service ~~standards in effect at the time of final plat approval~~ Agreement." (Testimony)

16. *Caleb Court* is opposed by many residents of *Nelson's Addition*. They object to Salmon Run North being extended only as a cul-de-sac, rather than as a future through street: They believe Salmon Run North was intended to be a through street and should be preserved as such. They object to the reduced right-of-way width and street section: They believe it will force residents and guests of residents in *Caleb Court* to park on their portion of the street as it will be the only part with effective on-street parking. They object to the reduced lot sizes and setbacks: They believe they will be significantly out of character with the lots and residences in *Nelson's Addition*. (Exhibits 11, 28, and 29 and testimony)

    Bughi, who submitted her comment letter at a time when the design had no lots touching the south property line), wants all construction access to use Salmon Run North rather than the easement across her property, wants the easement vacated, and wants a six foot high fence along her north property line to prevent trespass. (Exhibit 10)

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

PRINCIPLES OF LAW [8]

Authority

[8] Any statement within this section deemed to be either a Finding of Fact or a Conclusion is hereby adopted as such.

Preliminary subdivision and preliminary PUD applications require a pre-decision open record hearing before the Examiner who forwards a recommendation to the Sultan City Council (Council) for final action. [SMC 16.10.080, 16.28.320 - .340, and 16.120.050]

Review Criteria

The review criteria for preliminary subdivisions are set forth within SMC 16.28.330(A):

A. The Hearing Examiner shall … consider and review the proposed plat with regard to:

1. Its conformance to the general purposes of the Comprehensive Plan and Planning Standards and Specifications as adopted by the laws of the State of Washington and the City of Sultan;
2. Whether appropriate provisions are made … for: drainage ways, streets, alleys, other public ways, water supplies and sanitary wastes, transit stops, parks and recreation, playgrounds, schools and schoolgrounds;
3. The physical characteristics of the subdivision site and may disapprove because of flood, inundation or swamp conditions. It may require construction of protective improvements as a Condition of Approval; and
4. all other relevant facts to determine whether the public use and interest will be served by the … subdivision.

"The [PUD] district is an alternative to conventional land use regulations, combining use, density and site plan considerations into a single process." [SMC 16.10.010(A)] The PUD is an "overlay zone", applied "only after a site-specific and project-specific review." [SMC 16.10.020 and .010(A), respectively]

The SMC provides for both Retail Center PUDs and several types of Residential PUDs. [SMC 16.10.030] The general review criteria for PUDs are set forth at SMC 16.10.090(B):

> The hearing examiner recommendation shall include, at a minimum, findings and conclusions regarding the preliminary PUD's compliance with the criteria for location and approval for the particular type of preliminary PUD listed in SMC 16.10.100 (retail PUDs), SMC 16.10.110 (residential PUDs). A preliminary PUD shall be recommended for approval if, together with reasonable modifications or conditions, the project is determined to comply with the requirements of these sections. A preliminary PUD shall be recommended for denial if, even with reasonable modifications or conditions, the project is determined to not comply with the requirements of these sections.

The Local Project Review Act [Chapter 36.70B RCW] establishes a mandatory "consistency" review for "project permits", a term defined by the Act to include "building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan". [RCW 36.70B.020(4)]

(1) Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review. The review of a proposed project's consistency with applicable development regulations or, in the absence of applicable regulations the adopted comprehensive plan, under RCW 36.70B.040 shall incorporate the determinations under this section.

(2) During project review, a local government or any subsequent reviewing body shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations the adopted comprehensive plan. At a minimum, such applicable regulations or plans shall be determinative of the:

(a) Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional and special uses, if the criteria for their approval have been satisfied;
(b) Density of residential development in urban growth areas; and
(c) Availability and adequacy of public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by [the Growth Management Act].

[RCW 36.70B.030]

Vested Rights
Subdivision and short subdivision applications are governed by a statutory vesting rule: such applications "shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application ... has been submitted ...." [RCW 58.17.033; see also SMC 16.28.480]

Standard of Review
The standard of review is preponderance of the evidence. The applicant has the burden of proof.

Scope of Consideration
The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS

1. Street standards in PUDs, both right-of-way width and prism standards, may be "modified ... with the concurrence of the city council". [SMC 16.10.120(B)(4)(a) and (b)] The Design Standards also provide that the Council may modify the adopted standards. [Design Standards, § 1.06] Thus, no matter which authority is relied upon (the SMC or the design Standards), the Council is the body with authority to modify street standards.

2. The Design Standards state that modifications may be granted "upon evidence that such modifications are in the public interest, that they are based upon sound engineering judgment, and that requirements for safety, function, appearance and maintainability are fully met." [Design Standards, § 1.06]

   PUD provisions state that right-of-way and pavement "widths may also be reduced, especially where it is found that the plan for the PUD provides for the separation of vehicular and pedestrian circulation patterns and provides for adequate off-street parking facilities." [SMC 16.10.120 (B)(4)(b)]

3. The cul-de-sac design does not serve the public interest and should not be approved. Approval would result in a cul-de-sac more than twice the standard allowed length. (What other jurisdictions permit is irrelevant in Sultan.) Coupled with the proposed reduced width pavement, the extra-long cul-de-sac would create an adverse condition for emergency service vehicles.

   The Council should require re-design with the street stubbing out at the south property line for future extension south to intersect with High Avenue. Freed argues that such an intersection would be "approximately 250' west of the existing High Ave/Salmon Run North intersection, which is an unusually short intersection spacing." (Exhibit 24) The Design Standards contain no standard for intersection spacing. A 250 foot intersection spacing would not be all that unusual: The 8th Street/Garden Way and 8th Street/Depot Lane intersections are only about 200 feet (centerline-to-centerline) north of the 8th Street/Fir Avenue and 8th Street/High Avenue intersections, respectively. Both of those pairs of intersections are within a quarter mile of the *Caleb Court* site. (Exhibit 23.8 {Unnumbered p. 5})

   The three oversized acreage parcels south of *Caleb Court* will undoubtedly be redeveloped at some time in the future given current zoning and surrounding development. When that happens, a new intersection will be created anyway in roughly the same location as would occur if Salmon Run North were to continue south out of *Caleb Court*. The argument against a through street simply does not make sense nor serve the public interest.

4. Right-of-way width reduction in a PUD is available only where separation of vehicular and pedestrian traffic is proposed and where adequate off-street parking is provided. [SMC 16.10.120(B)(4)(b)] Here, right-of-way width reduction is coupled with a reduced street section,

limited on-street parking, undefined off-street parking areas, and a sidewalk easement on each side of the street. What is actually happening is that Freed is proposing to construct standard width travel lanes, no on-street parking strips, and sidewalks within a right-of-way which is too narrow to contain them. The "left over" parts of the sidewalk and planter strip are then placed within easements encumbering the front five feet of each frontage lot. The primary end result is an increased lot yield: With the typical lot in *Caleb Court* being 40 feet wide, the sidewalk easement design saves the applicant at least 200 SF for every lot which fronts directly on a street. Those savings equal nearly one lot. Savings compared to a standard width right-of-way (60 feet) are even more dramatic: The 35 foot right-of-way saves 12.5 feet on each side; with a typical 40 foot wide lot, 500 SF is saved per lot; over the 16 lots, some 8,000 SF is saved, equal to two lots gained with the reduced width right-of-way.

Further, "reversing" the planter strip and sidewalk placement as proposed does two negative things. First, it eliminates the "shy" space protection from motorists that pedestrians have when the planter strip is adjacent to the curb. Second, it effectively means that there will be no planter strip: The "planter strip" will be merely perceived as part of the front yards of the residences.

This concept is not what SMC 16. 10.120(B)(4)(b) is all about. As noted above, reduction is permissible only where "the PUD provides for the separation of vehicular and pedestrian circulation patterns and provides for adequate off-street parking facilities." No separation whatsoever of vehicular and pedestrian facilities is provided in this plan. (What little separation would be afforded by the planter strip is proposed to be eliminated by putting the strips outside the sidewalks.) The separation intended by the code is not just a planter strip along the curb, but provision of a wholly separate pedestrian circulation system, distinct from and largely, if not totally, removed from the street system. In such a case, reduced width rights-of-way would make sense as the sidewalks would not be associated with the streets. The current proposal, like *Greens Estates* before it, fails to meet the criteria for right-of-way reduction.

The Examiner asks the Council to carefully consider this issue and include within its action a ruling on acceptability of the concept and guidance for its future application: If it is approved here, it will likely reappear again and again in many future applications because of its ability to increase lot yield with no other apparent public benefit or private cost.

5. Another problem with the current proposal is loss of on-street parking. The current design provides on-site parking as required by the SMC. However, the design almost totally eliminates on-street parking. Under adopted Design Standards, a parking lane exists on each side of the street, allowing a substantial amount of on-street parking to augment on-site parking.

Four on-street parking spaces are proposed, but they come at the expense of more than half of the travel lane width on the inside bend of a 90° turn. Outbound motorists will have to slide over into the

inbound travel lane to get around those parking stalls, thus putting them in danger of a head-on collision with in-bound vehicles, made all the worse by the fact that the parked cars on the inside of the bend would largely block sight distance around the corner. The on-street parking plan is simply unsafe and should not be approved.

The oral offer to provide parking in Tract 999 around the edge of the cul-de-sac is a weak substitute for parking along the margins of the street. First, the proposal has relatively little "excess" open space: If too much of Tract 999 is taken over for parking, the proposal could fail to meet its open space requirement. Second, parking at the end of the cul-de-sac would be a long way from the houses at the north of the development, making it very inconvenient to use.

The Examiner recognizes that some cities are consciously adopting standards which allow parking on public streets that lack designated parking lanes. Such standards effectively result in 1-1/2 lane streets on which motorists have to wend their way through the parked cars. Such designs are thought by some to have desirable benefits. If that is what the City Council wants, then it should adopt appropriate standards so that it and the public will be fully aware of what they will get.

The Examiner asks the Council to carefully consider this issue and include within its action a ruling on acceptability of the concept and guidance for its future application: If it is approved here, it will likely reappear again and again in many future applications because of its ability to increase lot yield with no other apparent public benefit or private cost.

6. Part of the *Nelson's Addition* residents' objection to *Caleb Court* is that reduced rear yard setbacks will not be compatible with their subdivision's larger lots. (Exhibits 11, 28, and 29 and testimony) Only one *Nelson's Addition* lot directly abuts *Caleb Court*: Lot 2 which abuts Proposed Lot 1; the remainder of the *Caleb Court* east property line abuts *Nelson's Addition* Tract 999, an open space and/or drainage tract.

Proposed *Caleb Court* Lots 1 and 14 have side yards, not rear yards abutting *Nelson's Addition*. Freed is not requesting any side setback reduction: *Caleb Court* side setbacks would be the same as in *Nelson's Addition*. Since both developments would have identical side setback requirements, they cannot be found to be incompatible on that ground.

Caleb Court Proposed Lots 15 and 16 would have rear lot lines abutting *Nelson's Addition* Tract 999. If those lots abutted residential lots, then the opponents' argument that the proposal fails to comply with SMC 16.10.110(B)(3), Compatibility Criteria/Mitigation of Impacts on Adjacent Uses, would have merit. But since they will abut an open space tract and since the nearest lots in *Nelson's Addition* lie at least 60 feet east of Tract 999 (across Salmon Run North), their argument with respect to those lots also fails.

7. DCD erred in concluding that *Caleb Court* meets the concurrency standard for police services. The Conclusions in Appendix A are hereby incorporated by reference as if set forth in full. A Police Services Agreement does not meet the requirements of Chapter 16.108 SMC. Such an Agreement will never raise the LOS to meet the adopted standard: At best it would maintain whatever LOS existed at the time payments were made. It is an impermissible *pro rata* share payment for police services.

8. The Council's discussion of concurrency in many of its prior development approval resolutions (that additional tax revenues coupled with developer funds could raise the LOS to meet the standard) could be converted into a condition which could read as follows:

> Prior to approval of the Final plat, a combination of developer agreements and public funds, including additional tax adoptions (such as a utility tax on cable television service, an increased real estate excise tax, and a B & O tax), other funding sources (such as potential developer loans to advance the receipt of payment of needed funds), and monies contributed by the proposed development for its impacts on the LOS, shall put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised.

Such a condition would meet the requirement of SMC 16.108.060(C). The language of such a condition would be based almost word for word on Council statements in previous approval resolutions.

9. Approval could also be conditioned such that the police services LOS in existence at the time of final building permit inspections had to be met before approval for occupancy could be granted. Such a condition would meet the requirement of SMC 16.108.060(B).

In fact, this is exactly what Recommended Condition 24 in the latest DCD Recommendation required – until DCD wholly re-wrote it during the hearing.

10. Under the present circumstances, the best Concurrency solution would be to impose an "either - or" condition: Require compliance with a condition as suggested in Conclusion 8, above, or compliance with a condition as suggested in Conclusion 9, above. Unfortunately, the Police Services Agreement approach does neither.

11. The Council's adoption, without any comment or reservation, of the Examiner's Findings of Fact and Conclusions in the *Hammer PUD* case must be accorded some importance, especially in view of the

long line of preceding cases in which the Council (without explanation) expressly disagreed with essentially identical Findings of Fact and Conclusions.

The Council's apparent reversion to its prior holdings in the subsequent George 6-plex case (again without explanation) is baffling because that approval Resolution made absolutely no reference to the *Hammer PUD* Resolution. It is, therefore, impossible to tell from the written record why the Council abandoned the *Hammer PUD* position so soon after embracing it.

The Examiner recognizes that

> Council decisions made in the context of a quasi-judicial proceeding on a particular application establish the "law of the case" but do not establish legal precedent for any other cases. (The same holds true for Examiner Decisions and Superior Court judgments. Legal precedent for other cases is established only by published appellate court opinions.)
>
> However, when the Council rules in a general, broad fashion regarding the meaning, interpretation, and/or implementation of one of its enactments, where the enactment is amenable of more than one reasonable interpretation, and where the Council's ruling is a rational interpretation of the enactment, it is prudent for the Examiner to consider that ruling as a statement of the Council's intent and to follow it in future cases.

[*Hammer PUD*, FPPUD05-002 Recommendation, August 2, 2007, Footnote 22] The Examiner Recommendation adopted by the Council contained an extensive analysis and interpretation of the applicable ordinance. The Examiner must conclude that by accepting that Recommendation without comment, reservation, or exception, the Council consciously intended to change its position.

12. An application which does not meet minimum SMC requirements may not be approved. *Caleb Court* cannot be approved because of the above-enumerated deficiencies, all of which could be corrected with a substantially different design. Therefore, outright denial is not the most appropriate course of action.

The City may take one of three actions on a preliminary subdivision application: Approve it with or without conditions; return it to the applicant for modification to correct identified shortcomings; or deny it. [SMC 16.28.330(C)] Since *Caleb Court* could either be revised as a PUD or be refiled as a standard subdivision, the fairest solution is to return the preliminary subdivision application to Freed for modification.

The SMC does not expressly provide for denials without prejudice. A denial without prejudice is essentially an interim denial (albeit final unless subsequent action is taken).[9] It's purpose is to allow an applicant to correct an otherwise fatal defect without having to wait for the 120 day reapplication time period of SMC 16.120.030(B) to run. Where the problem which prevents approval is not the result of a totally unacceptable proposal, the "without prejudice" denial action is appropriate. Such is the case with the *Caleb Court* PUD application.

13. If the Council were to conclude after review of all the evidence that a cul-de-sac design as proposed were acceptable, the Examiner would recommend that Bughi's request (eliminate the easement across her property) be granted and made a condition of approval. If, on the other hand, the Council agrees with the Examiner that a through street design will better serve the public use and interest, then the Examiner would recommend that Bughi's request be denied: The existing easement would likely be incorporated into the street extension when the properties to the south redevelop.

14. If the Council were to conclude after review of all the evidence that a cul-de-sac design as proposed were acceptable, approval should include appropriate conditions. Under those circumstances, the recommended conditions of approval as set forth in Exhibit 19 are reasonable, supported by the evidence, and capable of accomplishment with the following exceptions:

    A. The plan reference in Recommended Condition 1 is inaccurate and incomplete. The correct plan reference would be Exhibit 23.6, not Exhibit 2. Further, the typical house plans need to be incorporated as well. Those plans are found in Exhibit 23.13.

    B. Land use approvals run with the land. Therefore, the word "applicant" is not the best choice to use in conditions as the party which was the original "applicant" may not be the eventual developer. DCD has mixed "applicant" and "developer" in the Recommended Conditions. All references to "applicant" should be changed to "developer."

    C. Recommended Condition 24. The Examiner recommends that this concurrency condition be revised to read as follows:

        > Prior to issuance of a certificate of occupancy and/or occupancy of any residence within the subdivision, a combination of developer agreements and public funds, including additional tax adoptions (such as an increased real estate excise tax and a B & O tax), other funding sources (such as potential developer loans to advance the receipt of payment of needed funds), and monies contributed by the proposed development for its impacts on the LOS, shall put in place the required public services for police concurrent with the

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9 It is analogous to the "return to the applicant for correction" option which is available for subdivision applications. [SMC 16.28.330(C)(2)]

development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised; or, in the alternative, the police services LOS in existence at the time of final building permit inspections shall be met before approval for occupancy is granted.

This is the same language accepted by the Council in *Hammer PUD*.

D. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 12 and 13 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.

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

RECOMMENDATION

Based upon the preceding Findings of Fact and Conclusions, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner recommends that the City Council: **DENY WITHOUT PREJUDICE** the request preliminary Planned Unit Development; and **RETURN** the proposed preliminary subdivision **FOR MODIFICATION.** If the Council concludes that the proposal meets all requirements for approval, then the Examiner would recommend that approval be **SUBJECT TO THE ATTACHED CONDITIONS.**

Recommendation issued November 13, 2007.

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

NOTICE OF RIGHT OF RECONSIDERATION

This Recommendation, dated November 13, 2007, is subject to the right of reconsideration pursuant to SMC 2.26.120(D). Reconsideration may be requested by the applicant, a party of record, or the City. Reconsideration requests must be filed in writing with the City Clerk/Treasurer not later than 5:00 p.m., local time, on November 26, 2007 (which is the first business day after the tenth calendar day after the date of mailing of this Decision). Any reconsideration request shall specify the error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the hearing conducted

by the Examiner which forms the basis of the request. Any reconsideration request shall also specify the relief requested. See SMC 2.26.120(D) and 16.120.110 for additional information and requirements regarding reconsideration.

NOTICE OF COUNCIL CONSIDERATION

This Recommendation becomes final as of the eleventh calendar day after the date of mailing of the Recommendation unless reconsideration is timely requested. If reconsideration is timely requested, the Examiner's order granting or denying reconsideration becomes the Examiner's final recommendation. The Examiner's final recommendation will be considered by the Sultan City Council in accordance with the procedures of SMC 2.26.120(D) and Title 16 SMC. Please contact the Department of Community Development for information regarding the scheduling of Council consideration of this Recommendation. Please have the applicant's name and City file number available when you contact the city.

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation."

RECOMMENDED CONDITIONS OF APPROVAL
FPPUD06-001
Caleb Court

The following conditions are offered in the event the Council determines that the proposal complies with all applicable criteria for approval.

This Preliminary Subdivision and Planned Unit Development are subject to compliance with all applicable provisions, requirements, and standards of the Sultan Municipal Code and standards adopted pursuant thereto. The permittee is responsible to obtain all necessary State and Federal permits and approvals required for completion of the project. In addition, development shall comply with the following special conditions:

Preliminary Plat and General PUD Design –

1. The general configuration, lot shapes and sizes, setbacks, site density, areas of open space, and typical house designs shall be as indicated on Exhibits 23.6 and 23.13 subject to these Conditions of Approval. Revisions to approved preliminary Planned Unit Developments are regulated by SMC 16.10.160(D) and (E); revisions to approved preliminary subdivisions are regulated by SMC 16.28.360. The Final PUD map shall be recorded as an amendment to the underlying zoning following Final PUD approval.

2. In accordance with SMC 16.28.340, the developer shall prepare a developer agreement subject to approval of the City. The agreement shall specify the requirements for construction of all infrastructure improvements, including plan submittals, inspections, bonding, private improvements, right-of-way improvements and facilities associated with the PUD, including improvements to all common areas. Site construction drawings shall be designed consistent with the conditions of approval. Site work shall not begin until City approval of the site development agreement.

3. The developer shall include screening fences consistent with SMC 16.12.120 at the rear property line of all lots prior to final inspection of the homes.

4. The developer shall establish a homeowners' association to assume responsibility for maintenance of common areas. The homeowners' association shall be recorded with the plat. The wording and conditions of the homeowners' association shall be subject to City approval prior to Final Plat.

5. The developer shall maintain the landscaping, open space improvements, drainage facilities, and other common areas within the site for a three-year period following installation. Such maintenance shall be secured with a performance bond filed with the City. Subsequent to the three-year period, maintenance responsibility shall be passed to the homeowners' association.

Parking –

6. Areas of no parking that need to remain open for proper access shall be clearly marked and/or signed.

Open Space –

7. Proposed landscaping and improvements shall be constructed prior to occupancy of homes as generally indicated on the master site plan (Exhibit 2).

8. Play equipment and benches shall be installed in the Recreation Tract 999 and meet the requirements of Chapter 16.72 SMC.

Flood Plain –

9. The approximate flood zone elevation shall be drawn and labeled on the final plat drawing. All structures, improvements, and grading to be completed within the plat shall be designed and constructed in accordance with Chapter 17.08 SMC, Flood Damage Prevention. All structures in the 100-year flood plain shall be elevated and/or flood proofed. Elevation certificates are required. A note shall appear on the face of the plat and shall be recorded on the title of each lot within the floodplain that states: "Property may be within FEMA Flood Zone A and subject to flood hazards." unless the developer provides engineering documentation that demonstrates a lot is outside of the flood zone.

Water –

10. The developer/owner is responsible for any necessary improvements to the City's water system in order to provide adequate water to the site.

Sewer –

11. The developer/owner is responsible for any necessary improvements to the City's sewer system in order to provide sewer service to the site.

Surface Water Management –

12. During grading and construction activities, the developer shall retain and manage on-site surface and storm water within the site per the recommendations of the *Drainage Report* revised September 13, 2007 prepared by Site Development Associates, LLC. (Exhibit 23.9)

13. During site development, the developer shall inspect weekly, maintain, and repair all temporary and permanent erosion and sediment control BMPs to assure continued performance. During the wet weather construction period, the access road and on-site utilities shall be phased to minimize open soil exposure.

14. The temporary stormwater management facilities shall be constructed before any significant amount of site grading commences.

Transportation –

15. Final street design, including paving, sidewalks, frontage improvements, parking, and emergency access must be approved by the City Engineer prior to construction. Replacement of the existing turnaround on Salmon Run North shall include extension of sidewalks, driveways and front lawns for affected lots as needed.

16. Street lighting shall be required on the on-site street. Prior to site development, the developer shall submit a detailed lighting plan that depicts continuous street illumination throughout the PUD to City staff for review and approval (SMC 16.10.120(B)(4)(a)). A master meter will be installed with monthly costs being borne by the Homeowners Association.

17. The developer shall post a five-year maintenance bond with the City to ensure effective implementation of pervious surface sections on the proposed street system, if pervious concrete roads are constructed. If an alternate asphalt and concrete street is constructed a two year maintenance bond will be required.

Other –

18. The developer shall demonstrate sufficient water flow from the proposed fire hydrants for review and approval by the City Engineer and Fire District prior to the issuance of occupancy permits.

19. Prior to construction, the developer shall prepare an erosion control plan subject to review and approval by the City Engineer.

20. During construction, the developer shall ensure that trucks are cleaned before leaving the site. The developer shall provide street cleaning of Salmon Run North during site clearing, grading and filling and shall promptly clean up any dirt, mud or other material deposited on public streets and shall be responsible for cleaning storm drains in public streets that are impacted by the construction.

21. All site improvements including streets, sidewalks, drainage improvements, open space landscaping and improvements, and other common area improvements shall be completed prior to Final Plat, with the exception of the final paving of streets. Alternatively, the City may approve a financial bond or assurance for items not completed prior to Final Plat. All site improvements, not including individual homes, must be installed prior to final inspection of the first home.

22. The existing house and structures proposed for demolition shall be moved, demolished, or otherwise modified so that they are in compliance with the Sultan Municipal Code prior to final plat approval.

23. The developer/developer shall pay traffic, recreation, and school impact fees and their administrative processing costs in accordance with Chapters 16.112 and 16.116 SMC.

24. Prior to issuance of a certificate of occupancy and/or occupancy of any residence within the subdivision, a combination of developer agreements and public funds, including additional tax adoptions (such as an increased real estate excise tax and a B & O tax), other funding sources (such as potential developer loans to advance the receipt of payment of needed funds), and monies contributed by the proposed development for its impacts on the LOS, shall put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised; or, in the alternative, the police services LOS in existence at the time of final building permit inspections shall be met before approval for occupancy is granted.

APPENDIX A
GENERAL FINDINGS OF FACT AND CONCLUSIONS REGARDING CONCURRENCY

FINDINGS OF FACT

A. The currently adopted LOS standard is 2.6 uniformed officers per 1,000 population. (2004 Comprehensive Plan, Appendix B, p. 2.74) (The LOS standard in the prior 1994 Comprehensive Plan was two police vehicles per 1,000 population. (2004 Comprehensive Plan, Appendix B, pp. 2.74 and 2.75))

B. The City conducted the inventory which formed the basis of the currently adopted LOS standard in 2003. It used an estimated 2003 population of 3,814 to develop that standard. [10] (2004 Comprehensive Plan, Appendix B, p. 2.75) The City had 10 full-time uniformed officers in 2003. (2004 Comprehensive Plan, Appendix F, pp. 214 – 215) The ratio of uniformed officers to population in 2003 when the LOS inventory was conducted, based on the population number used, was 2.6 officers per 1,000 population. (2004 Comprehensive Plan, Appendix B, p. 2.74)

C. Police services LOS concurrency first was challenged and became an issue in the *Cascade Breeze Estates* and *Steen Park* applications in the Spring of 2006. [FPCUP05-002 and FPCUP05-003, respectively] It remained a sticking point through the *Skoglund Estates*, *Vodnick Lane*, *AJ's Place* [BSP05-001], *Twin Rivers Ranch Estates*, George 6-plex, and *Hammer PUD* applications. In each of those cases the Examiner held that Chapter 16.108 SMC did not establish a proportionate mitigation payment system. (Official notice)

Beginning with *Skoglund Estates*, each applicant/developer offered identical Developer Agreements to Establish Concurrency for Police Services. Those Agreements offered a proportionate payment to offset police costs; none would have raised the LOS anywhere near the established standard. In fact, all the Agreements would do is maintain whatever LOS existed when the payments were made. In each case, the Examiner held that such a system conflicted with the requirements of Chapter 16.108 SMC. Beginning with the July 12, 2006, Recommendation in *AJ's Place*, the Examiner included in his Recommendations a proposed condition, based upon language in Council resolutions, which would comply with the requirements of Chapter 16.108 SMC. [11] (Official notice)

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10 The basis for that 2003 population estimate is not in the record before the Examiner. The Washington State Office of Financial Management, Forecasting Division, (OFM), estimated Sultan's April 1, 2003, population to be 4,095. The LOS standard, being a legislatively adopted policy decision by the Council, may not be reconsidered, altered, or challenged in the context of this project permit application. [See RCW 36.70B.030, quoted in part in the Principles of Law section, below.]

11 The Examiner actually presented the theory behind the LOS condition in his first *Hammer PUD* Recommendation, dated June 15, 2006. However, that Recommendation did not include recommended conditions as it did not recommend approval of the application. (Official notice)

In each of the above-listed cases, except for the Council's recent *Hammer PUD* decision, the Council disagreed with the Examiner and included language in its approval resolutions essentially as follows:

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

5. The Council takes notice of the Recommendations in the Prothman Report accepted by the Council and Ordinance 900-06. The City has adopted a utility tax applicable to its municipal utilities and has received Recommendations for additional tax adoptions, including a utility tax on cable television service, an increased real estate excise tax, and a B & O tax. Other funding sources could include potential developer loans to advance the receipt of payment of needed funds, and monies contributed by proposed development for their impacts on the LOS. A combination of developer agreements and public funds will put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised.

6. The Council takes notice of the Applicant's offer at the Closed Record Hearing to deliver to the City a Developer Agreement to pay Applicant's incremental share for a police officer for one year.

7. Based upon the foregoing, this proposed Development is deemed concurrent.

(This language is taken from Resolution Nos. 06-06 and 06-07, approving *Steen Park* and *Cascade Breeze*, respectively. It was repeated nearly verbatim in subsequent Council Resolutions.) The Council did not actually require execution of any of the offered Developer Agreements. (Official notice)

D. On August 2, 2007, the Examiner issued a recommendation to approve *Hammer PUD*. That Recommendation, as had those preceding it, included a detailed exposition of Findings and Conclusions regarding Police Services LOS. That Recommendation, as had all since *AJ's Place*, included a condition to fulfill the concurrency requirement. The Council approved *Hammer PUD* by Resolution No. 07-19 on August 23, 2007. The Council adopted, without comment, reservation, or exception, all Findings and Conclusions within the Examiner's recommendation. (Official notice)

E. On September 13, 2007, the Council approved Resolution No. 07-22A, approving the George 6-plex subject to conditions. (Exhibit 18) Of note, this Resolution, adopted some three weeks after the Council's *Hammer PUD* Resolution, reverts back to the Council's former position on Police Services LOS and rejects the same Examiner Findings of Fact and Conclusions which it had just approved in the *Hammer PUD* case.

CONCLUSIONS

A. Section 16.108.060 SMC states that development approval is to be granted "only if the proposed development does not lower the existing level of service (LOS) of public facilities and services below the adopted LOS in the comprehensive plan." But what happens where the existing LOS is already below the established standard? May a development be approved because it is not the one which "broke" the LOS standard?

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

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

B. The concurrency process of Chapter 16.108 SMC is wholly separate from and independent of the impact fee process of Chapter 16.112 SMC. The former seeks to assure that established LOSs are maintained; the latter requires developers to pay a share of the costs of facilities required by new development. The latter is a Growth Management Act (GMA) impact fee program adopted by the City pursuant to Chapter 36.70A RCW, GMA, and "RCW 82.02.050 et sequitur". [SMC 16.112.010, ¶ 1] The latter is not subject to the fee limitations associated with RCW 82.02.020; but it is subject to the definitional limitations of RCW 82.02.090: No impact fess may be collected for police services as such services are not defined as "public facilities."

C. Chapter 16.108 SMC does not impose an impermissible cost on developers. In fact, it doesn't necessarily impose any cost on developers. Rather, it establishes a threshold condition which must now exist in the community, be conditioned to exist concurrent with the impacts of the development, or be funded to exist concurrent with the impacts of the development in order for any development approval to be granted. If that threshold condition (LOS at or above the established level) exists

when the development approval is granted, then SMC 16.108.060(A) is met and the development is deemed concurrent. [12] If the required LOS is not present, then SMC 16.108.060 provides two alternative mechanisms by which a development may still be found to be concurrent.

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

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

Subsection (C) addresses the situation where the LOS standard would not be met but the developer enters into a binding agreement with the City to provide the necessary resources to raise the LOS to meet or exceed the established LOS within six years. This is an option in which the typical developer would likely be committing more than his/her fair share. But "latecomers" agreements are available for just such situations. [13] And, the developer always has the option to wait until the City makes the necessary commitments to raise the LOS.

D. According to SMC 16.108.070, .120, and .130, the LOS standard for police services is the standard as set in the 2004 Comprehensive Plan: 2.6 uniformed officers per 1,000 population. The City does not meet its police services standard. The remainder of this section will address police services LOS only.

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

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

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

Whether that was the Council's intent when it adopted the 2004 Comprehensive Plan is unknown. (Legislative intent is not relevant where the enactment is clear and unambiguous on its face.) Whether the Council even realized the effect of the standards it was adopting is equally unknown. Even if the Council were to change the standards now, new standards could not legally be applied in the review of *Greens Estates* because of the vested rights doctrine: The application must be reviewed against the regulations which existed on September 2, 2005, the date the application was deemed complete. Further, an applicant may not "selectively waive" some old regulations while retaining a vested right to others. [*East County Reclamation Co. v. Bjornsen*, 125 Wn. App. 432, 105 P.3d 94 (2005)]

E. A concurrency recommendation or certificate must be based upon facts. Those facts must include the (estimated) population of the City at the time of the application for which concurrency is sought, the number of residents expected to be added by the proposed development, and the amount of the affected service then available in the community (For example, the number of uniformed officers in the police department; the total acreage of parks, recreation, and open space using the same methodology as used in the 2003 inventory.) Given those facts, LOS for each required service area may be calculated. Without those facts, LOS cannot be calculated. If the LOS cannot be calculated, then no favorable conclusion is possible regarding concurrency.

F. The present LOS for police services is far below the standard established within the 2004 Comprehensive Plan. Additional residential development within the City will only serve to further lower the LOS.

G. Nothing has been presented to convince one that a Police Services Agreement patterned after those offered in previous cases would guarantee that the police services LOS will meet the established standard when the development occurs – or even six years later. The concept underlying the offered agreements suffers from several shortcomings. First, even if fully funded all at once, the Police Services Agreement would fund only a miniscule fraction of the cost of one police officer for one year. The City cannot hire a tiny fraction of a person. Even if it could, the LOS would still be woefully below the established standard – and would fall back again after the one year of funding ended.

Second, the costs in the previously offered Police Services Agreements have been based on the City's cost to support one uniformed police officer. If, as testimony in a prior hearing suggests, the City may replace its substantially reduced uniformed officer count with contracted police services, the costs of such contracted services may be wholly different from the City's present costs. A carbon copy of prior agreements may or may not represent a fair share of actual costs.

Third, the Police Services Agreement calls for the funds to be paid as each building permit is issued. This provision would result in even a more miniscule revenue stream, making it even more unlikely that a police officer could be hired.

Fourth, even if all the offered funds were paid at one time, it would take many developments to fund just one police officer, and that one officer would not raise the police services LOS to the established standard. It would take many, many developments, all developed at essentially the same time, to raise the LOS to the established standard. But that simple equation (1 officer funded by the fees based on the previously offered schedule yields 2.54 officers after approximately 381 dwelling units) fails to account for the fact that those 381 dwelling units would themselves raise the City's population by some 1,029 people (2.7 persons per household, the number stated in the previously offered Police Services Agreements), thus lowering the LOS again. In fact, all such a program does is hold the LOS at its current level as new houses are added to the community – and then only if development occurs fast enough that the payments for fractional officers can be combined to actually hire a police officer.

This concept simply is not what Chapter 16.108 SMC requires. The Council may certainly change the SMC requirement if it wishes. But in the meantime, the code is what controls – and even if the code were changed today, that change would not apply to any subdivision application filed in a complete fashion before the change became effective.

Finally, incremental funding runs afoul of the RCW 82.02.090 prohibition against collecting impact fees for police services. The Police Services Agreement concept is essentially a *pro rata* share payment system for police services. Such a system is not allowed under State law. If Chapter 16.108 SMC is read as the Examiner believes it has to be, no such conflict would exist as the chapter would not be charging an impact fee.

H. The City has no "strategy in place" to increase police staffing. The electorate defeated its latest proposed strategy. The discussion in prior Council Resolutions regarding possible additional taxes that could or might be adopted to raise revenue is a strategy, but it is not in place. Utility and cable taxes have been adopted. But the record is devoid of any data that would support the notion that those taxes will enable the City to raise the Police Level of Service to meet the adopted standard.

Rick Cisar

From: Mark Lamb [mark@northcreeklaw.com]
Sent: Thursday, November 29, 2007 10:02 AM
To: rick.cisar@ci.sultan.wa.us
Cc: 'Mark Lamb'
Subject: FW: 10 day Extension

Rick,

Per our conversation please consider this email my formal acceptance of an extension of the City Council public Meeting to consider Freed LLC's appeal of the Hearing Examiner's recommendation on Caleb Court from December 31st to January 10th. I would request that in light of this the ultimate hearing be held in the month of January if at all possible. Please don't hesitate to contact me with any questions. Thank you.

Best,

Mark Lamb
The North Creek Law Firm
A Professional Corporation

12900 NE 180th Street
Suite #235
Bothell, WA 98011

(425) 368-4238
(425) 489-2824 (FAX)

www.northcreeklaw.com

Attachment 3

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.