

SULTAN CITY COUNCIL

AGENDA ITEM COVER SHEET

ITEM NUMBER: A-2
Greens Estates Preliminary Subdivision and Planned Unit Development

DATE: January 24, 2008

SUBJECT: Conduct a Closed Record Hearing and Public Appeal Hearing for the Greens Estate Preliminary Planned Unit Development Subdivision to consider the Hearing Examiner's Recommendation

CONTACT PERSON: Erin Martindale, Perteet Inc.

ISSUE:

The issue before the City Council is to conduct a Closed Record Hearing and Public Appeal Hearing to consider the Hearing Examiner's Recommendation dated September 19, 2007 (Exhibit 1) for the Greens Estate Preliminary Planned Unit Development Subdivision and the Appeal from Sultan 144, LLC (Exhibit 3) in accordance with SMC 2.26.150(C), (D), (E), and (F) (Exhibit 4).

The Hearing Examiner recommended denial of the Planned Unit Development and returning for modification of the Preliminary Subdivision, based on the application not meeting the locational criterion for transit under SMC 16.10.110(B)(2)(d). The Hearing Examiner recommendation includes revised conditions of approval in case the Council does not concur with the reasons for denial of the Planned Unit Development.

The Hearing Examiner also raised four (4) other issues that should be discussed by Council, but were not reasons to deny the application. These issues are outlined below, and are more fully discussed in the Discussion section of this staff report.

The following issues were raised by the Hearing Examiner:

1. The Greens Estates Preliminary Subdivision and PUD cannot meet the requirement under SMC 16.10.110(B)(2)(d) that "transit is available in sufficient proximity to the site to facilitate transit access to the PUD-SF". (SUBJECT OF APPEAL)
2. The Greens Estates Preliminary Subdivision and PUD has a total of twelve (12) lots that use panhandles which flare out. They have street frontage of twenty (20) feet, as required by SMC 16.150.010(3), and then decrease the width of the

panhandle to fifteen (15) feet for the remainder of the panhandle portion of the lots. The Code does not have a provision to allow or prohibit this.

3. The Greens Estates Preliminary Subdivision and PUD reduced the total right-of-way width by placing both five (5) foot sidewalks in easements. A PUD allows approval of reduced right-of-way width 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, the right-of-way width reduction is not coupled with separation of vehicular and pedestrian traffic or off-street parking areas. While the street section meets the City's Design Standards, the right-of-way is reduced by placing the required sidewalks in easement on each side of the street, which is not one of the provisions in the Code for allowing reduced right-of-way.
4. The Greens Estates Preliminary Subdivision and PUD property includes an undefined Puget Sound Energy (PSE) aerial transmission easement. The Hearing Examiner recommended that the location of this easement be defined prior to Council approval. PSE has submitted a letter to the Applicants outlining the restrictions on use of the easement. That letter is attached to this staff report.
5. The Greens Estates Preliminary Subdivision and PUD does not meet the requirements for police concurrency under the City's concurrency management system in SMC 16.108.

ACTIONS FOR COUNCIL TO TAKE:

1. Conduct the Closed Record Hearing on the Greens Estate PUD and the Public Appeal Hearing on the Appeal of the Hearing Examiner's Recommendation by Sultan 144, LLC, Inc. that Greens Estates project cannot meet the transit criteria in SMC 16.10.110(B)(2).
2. Discuss the issues outlined in the Issues section and detailed in the Discussion section of this staff report.
3. At the conclusion of the Closed Record and Public Appeal Hearing, consider under Action Item A-2 one of the following options. The Resolutions discussed have been prepared by staff to guide discussions:
 - a. Resolution Number 08-03A, which accepts the Recommendation of the Hearing Examiner denying the PUD Application and returning the Preliminary Subdivision Application to the Applicant for modification; or
 - b. Resolution 08-03B, which rejects the Recommendation of the Hearing Examiner, accepts the Hearing Examiner's finding of fact, some conclusions of law, makes other differing conclusions of law, and grants

- approval of the Application subject to the Hearing Examiners revised conditions of approval; or
- c. Resolution 08-03C, which Accepts recommendation of Hearing Examiner denying the PUD Application and returning the Preliminary Subdivision Application to the Applicant for modification, accepts Hearing Examiner findings of fact and some conclusions of law, makes other differing conclusions of law, denies application for PUD plat approval (based on driveway flares) and remands to hearing examiner and applicant to modify application .
 - d. Request a new Resolution that incorporates the policy discussions within this staff report, and either Approve, Deny or Remand the application based on conclusions of the policy discussions. This Resolution will include increased clarity on the policy discussions to guide future development applications, and may revise some conditions of approval recommended by the Hearing Examiner.

APPLICANT APPEAL:

The Hearing Examiner recommends denial of the PUD due to the projects failure to meet the location criteria in SMC 16.10.110(B)(2)(d) that "transit is available in sufficient proximity to the site to facilitate transit access to the PUD-SF".

The Applicant filed an appeal with the City on October 12, 2007 appealing the Hearing Examiner's Recommendation to deny the PUD based on the locational criteria in SMC 16.10.110(B)(2)(d) that "transit is available in sufficient proximity to the site to facilitate transit access to the PUD-SF".

In their appeal filing, the Applicant requests that the City Council find that the requirements of SMC 16.10.110(B)(2)(d) are met based on the Greens' Estates proximity to transit, based on previous approvals and interpretations by staff and the Council of that requirement for transit proximity.

SUMMARY OF COUNCIL ACTIONS:

The actions the City Council may take at the Public Appeal Hearing are:

1. To grant the Appeal of the Hearing Examiners Recommendation; or
2. To deny the Appeal.

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

1. Deny the Planned Unit Development affirming the Recommendation of the Hearing Examiner; or
2. Reject the Hearing Examiner's Recommendation, make new findings and conclusions, and Approve the Application with Conditions of Approval; or

3. Remand the development back to the Hearing Examiner for further proceedings in accordance with the City's Council's findings and conclusions.

Actions taken by the City Council on the development have been formalized in a Resolution, Numbers 08-03 A, 08-03 B, and 08-03C prepared by the City Attorney.

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'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.

BACKGROUND:

The Hearing Examiner conducted an Open Record Hearing on September 11, 2007 for the Greens Estate Preliminary Subdivision and Planned Unit Development located south of 132nd Street S.E. and east of Sultan Basin Road. The Hearing Examiner's Report and Recommendation, dated September 19, 2007, DENIED the Planned Unit Development; RETURN Preliminary Subdivision for Modification. The Hearing Examiner's Recommendation, on page 29 of 36, included revised conditions of approval in case the Council disagrees with the reason for denial of the Planned Unit Development (Exhibit 1 starting on page 31).

The Applicant filed an appeal with the City on October 12, 2007 appealing the Hearing Examiner's Recommendation to deny the PUD based on the locational criteria in SMC 16.10.110(B)(2)(d) that "transit is available in sufficient proximity to the site to facilitate transit access to the PUD-SF". The appeal hearing is heard by the Sultan City Council.

SMC 2.26.150 requires scheduling an Open Public Meeting for the City Council to consider the Appeal no sooner than 21-days nor longer than 35-calendar days from the date the Appeal was filed. The City Council scheduled this Appeal for an Open Public Meeting on November 8, 2007.

On November 8, 2007 the City Council conducted the Public Meeting on the Appeal and thereafter by Motion, set December 13, 2007 at 6:00 p.m. to conduct the Closed Record Hearing and Public Hearing on the Appeal for the Greens Estate Planned Unit Development. At the December 13, 2007 hearing, the Closed Record Hearing for the Preliminary Subdivision and PUD, and the Public Hearing for the Appeal was postponed until January 10, 2008. Prior to the January 10, 2008 meeting date, the Applicant requested a postponement to the January 24, 2008 Council meeting.

SMC 2.26.150, Council Consideration, pre-dates regulatory reform adopted by State Law in 1995 which allows one Open Record Hearing in front of the Hearing Examiner and one Closed Record Hearing in front of the City Council. Due to regulatory reform,

the only legally defensible action was to consolidate the Appeal with the Hearing Examiner's Recommendation.

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

The Closed Record Hearing Schedule for Thursday, January 10, 2008 provides the City Council with the one Closed Record Hearing as permitted by State Law.

DISCUSSION:

The Recommendation of the Hearing Examiner includes two alternatives:

1. DENY the requested preliminary Planned Unit Development; and RETURN the proposed Preliminary Subdivision for modification, or
2. If the Council concludes that the proposal meets all requirements for approval, then the Hearing Examiner would recommend that approval be SUBJECT TO THE ATTACHED CONDITIONS and NOT be granted unless and until the Applicant has submitted to the Council a written statement from Puget Sound Energy accepting the proposed layout as properly recognizing and preserving its aerial high voltage transmission easement across the property.

Recommendation of Denial:

The Hearing Examiner Recommends that the application for a Planned Unit Development be denied because it does not meet the locational criterion in SMC 16.10.110(B)(2)(d) which states that "transit is available in sufficient proximity to the site to facilitate transit access to the PUD-SF".

The Hearing Examiners interpretation of the language of the locational criteria in SMC 16.10.110(B) is that transit must be no more than three-fifths (3/5) of a mile from a transit stop, *and* have pedestrian access between the development and that stop, in order to meet the criteria, which requires that transit be available to the site in sufficient proximity to facilitate transit access, not that the site be designed to facilitate transit access. This minimum access requirement was outlined by the Hearing Examiner in the Vodnick Lane PUD project. While the Greens Estate project mostly has pedestrian access between the property and a bus stop, it is approximately one mile from the nearest stop, which exceeds the threshold that the Hearing Examiner has laid out.

The Hearing Examiner recognizes that Council has previously overruled his interpretation of that provision in the Code, most pertinently with Skoglund Estates, which is directly adjacent to this property and has the same distance to transit. His recommendation also states that previously, these overrulings have not had sufficient explanation to change his interpretation of the locational criterion in the code.

Staff Response:

The Hearing Examiner's Recommendation is inconsistent with City Council's previous action in approving the Skoglund Estates Preliminary Planned Unit Development on June 29, 2006. The Council, in Resolution No. 06-09A found that the proximity requirement was met by stating that "Community Transit Routes 270, 271, and 275 service the Sultan Park and Ride on US 2 East of 10th Street, approximately 1.0 mile from the site. Service is provided through the City and to and from Everett via Snohomish and Monroe".

The reason that the Hearing Examiner has not followed Council's direction on this issue is, as he says, that he has not received sufficient explanation from Council on how Council interprets the PUD locational criteria.

An administrative interpretation was generated in May 2006 that stated that the purpose of the transit locational criteria is that the PUD must provide for transit service to the site. It also references another section of the PUD Code, SMC 16.10.120(B)(4)(c)(i), which provides standards for streets in PUDs, and requires that transit and school bus stops be provided by PUD's.

This application will provide a bus pullout and turnaround on Sultan Basin Road. It conforms to the Street provisions under SMC 16.10.120. The administrative interpretation ties the street provisions to the locational criteria in SMC 16.10.110 and states that as long as transit and school bus facilities are provided, PUD applications are considered compliant with the locational criteria.

This interpretation generally matches the Council's direction on the transit criteria. As a step towards bringing the Hearing Examiner and the Council on the same page regarding this requirement, Council could adopt language in a resolution that explains fully how this Code requirement is interpreted. This language could include the following explanation:

- SMC 16.10.110(B)(2)(d) requires that transit be available in sufficient proximity to the site to facilitate transit access to the PUD-SF.
- SMC 16.10.120(B)(4)(c)(i) requires that PUD-SF's provide transit and school bus routes and school bus stops be provided either within the development or on the perimeter streets.
- Council policy states that as long as the provisions for transit stops in SMC 16.10.120(B)(4)(c)(i) has been met, then the locational criteria for siting PUD's under SMC 16.10.110(B)(2)(d) has is also found to have been met.
- Greens Estates proposes a bus pullout and bus turnaround off of Sultan Basin Road, meeting the requirements of SMC 16.10.120(B)(4)(c)(i).

- Consistent with past interpretations, Council finds that the Greens Estates meets the locational criteria under SMC 16.10.110(B)(2)(d) regarding access to transit.

Council should be aware that the Hearing Examiner might not accept this explanation from Council and then continue to interpret the transit locational criteria differently from Council policy. If that is the case, Council may need to consider a code amendment to this criteria or the PUD Code so that the Hearing Examiner can find future PUD applications in compliance with the Code and interpret the Code the same way that Council does.

Other Issues Raised in Recommendation:

The Hearing Examiner recognizes that the Council may overrule his recommendation of denial, and consequently outlined other issues that the Council should be aware of in making their decision. He included a lengthy discussion of several issues that were outlined above, including the following:

Panhandle widths

The Greens Estates Preliminary Subdivision and PUD has a total of twelve (12) lots that use panhandles which flare out. They each have a street frontage of twenty (20) feet, as required by SMC 16.150.010(3), and then decrease the width of the panhandle to fifteen (15) feet for the remainder of the panhandle portion of the lots, which is approximately seventy-five (75) feet. Lots 5, 11, 20, 21, 29, 30, 38, 41, 42, 45, 46 and 61 all use this approach.

The benefit to this approach is that it increases the lot area for those lots that are adjacent to the panhandle lots. In this case, a total of eight (8) lots have increased lot sizes by between five (5) and ten (10) feet in width, which increases the total lot size from 3,800 – 4,275 square feet to 4,750 square feet. The concept is another way to increase yield: A typical 20-foot wide panhandle is reduced to 15-feet for most of its length. Given that most of the panhandles are about 75-feet long, the design “saves” about 350-feet for every panhandle. The 30+ panhandles in the plat “save” the equivalent of about two lots.

However, there are concerns with this approach. The Hearing Examiner’s Recommendation states that:

Most people, rightly or wrongly, expect their property lines to be straight-line segments. Since the driveways in these panhandles will likely not be flared to match the property lines, abutting owners may well believe that their property lines run straight to the street. Property line disputes could result and/or the panhandles could end up to be effectively only 15 feet wide all the way to the street. **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 in many future applications because of its ability to increase lot yield with no other apparent public benefit or private cost. (Emphasis added)**

Staff Response:

The use of panhandles is generally used where access to properties is restricted due to the configuration and depth of the property which would not support a public or private street, cul-de-sac, eyebrow, or bubble. Similar situations occur in the City where private streets as well as driveways abut each other with landscaping and or fencing separating the properties. The flag lot concept has been used in the downtown area to create additional lots/housing in the rear of long narrow pieces of property where public and private streets are not an option. The flag lots as indicated by the Hearing Examiner create, in this situation, additional lots and density within the project. However, the concept can create disputes between the property owners unless adequately addressed in the Protective Covenants and administered by the Homeowner's Association.

The Sultan Municipal Code does require, in the definition of access, that all lots have a twenty (20) foot access to a public or private road at the street frontage. It does not allow or prohibit panhandle from being reduced once it moves away from the street frontage. This is a council policy issue that requires a choice to be made. The policy choice for this and future applications may include one of the following. These options are meant to be a starting point to begin discussions on these issues between Council members. They include:

1. Require the twenty (20) foot access for the entire panhandle.
2. Allow the fifteen (15) foot access for a majority of the panhandle, with the required twenty (20) feet of street frontage achieved with a "flare" at the property line.
3. Discuss making greater use of private roads.

1 – Require the twenty (20) foot access for the entire panhandle.

This would reduce the available buildable area for adjacent lots, which includes Lots 4, 12, 39, 40, 43, 44, 47 and 62. These lots would lose between 475 and 950 square feet per lot, or there would be a reduction in the number of lots.

The Applicant's appeal filing and supporting documentation states that the Council has stated their preference for the larger lot sizes. Reducing the width of the panhandles is one way to increase the lot sizes while still allowing the density on this property.

2 – Allow the fifteen (15) foot access for a majority of the panhandle, with the required twenty (20) feet of street frontage, achieved with a "flare" at the property line.

This would set a precedence for future PUD's, which would want the same treatment. The Applicant's appeal filing states that the Skoglund PUD has some panhandle lots with the flared street frontages. However, the number of lots that this applies to is only four (4) for the Skoglund project, compared to twelve (12) for Greens Estates. This project will set the tone for future PUD applications that are submitted to the City.

The concern with allowing the smaller fifteen (15) foot wide access is that the Code does not have a specific provision to allow that flexibility. Without that provision, the authority may not be there for staff to administratively approve it. Again, this is a Council policy decision that is being decided for this project, but also has larger implications for future PUD's in Sultan.

While the Fire District did not provide comment on this project, the Applicant has been in contact with the Fire District to determine whether these panhandles meet the Fire Code Standards. Their initial discussions implied that the fifteen (15) foot width access would meet the Fire Code. Without any written documentation of this, it is not known whether fire access is impacted by the reduced width.

As the Hearing Examiner stated, another issue with the flared panhandles is disputes between property owners. This is a likely event. While these disputes can be somewhat reduced by clear Homeowners Association rules, the City cannot enforce those agreements. These disputes would undoubtedly involve the City. Prohibiting the use of flared panhandles would avoid these disputes.

3 – Discuss making greater use of private roads.

The Sultan Design Standards and Specifications allow the use of private roads for up to four (4) lots. However, they have not been preferred due to the reduced public benefit and an issue with maintenance responsibility.

Private roads are regulated by the City's Design Standards and Specifications. They include a thirty (30) foot easement or tract including two (2) 12-foot travel lanes and one (1) 5-foot sidewalk. No parking is allowed on private roads and no planter strip is provided. A turnaround is required for some private roads; this is regulated by the Fire Code. Typically, a private road over 150 feet in length would require a turnaround.

Using private roads would solve several problems, because they would eliminate most of the panhandle lots on this project. For example, the access to lots 40 through 43 could be consolidated into one private road; it would be approximately 100 feet long. This would allow one driveway to access onto Road A, decreasing vehicle conflicts and providing more on-street parking. For one section of roadway on Road A, between Lots 38 and Lot 47, there is no on-street parking provided due to the number of driveways.

Reduced Right-of-Way Widths

The Greens Estates Preliminary Subdivision and PUD reduced the total right-of-way width by placing both five (5) foot sidewalks in easements.

A PUD allows approval of reduced right-of-way width where separation of vehicular and pedestrian traffic is proposed and where adequate off-street parking is provided [SMC 16.10.120(B)(4)(b)]. This means that in order to approve reduced right-of-way, the Applicant will have to show that moving vehicles and pedestrian traffic are separated by

planter strips and parked cars, *and* that enough off-street parking is provided so that the loss of on-street parking is compensated for.

Here, the right-of-way width reduction is not offset by separating vehicles and pedestrian beyond the minimum required, by providing additional off-street parking areas.

While the street section meets the City's Design Standards, the right-of-way is reduced by placing the required sidewalks in easement on each side of the street, which is not one of the provisions in the Code for allowing reduced right-of-way. Setbacks for houses are measured from the property line, and would mean much smaller distances between the homes and the sidewalk (i.e. small yards).

Staff Response:

There are two (2) issues with this modification to the requirements of the Code and Design Standards.

1 – Off-Street Parking: The first is in regards to the lack of off-street parking provided. The off-street parking provided by the project meets the parking requirements in SMC 16.60.140, which requires two (2) parking spaces per single-family dwelling unit. However, the provision in the PUD Code may require additional parking that would compensate for the loss of on-street parking be provided. It is likely that this project provides more than the minimum requirements. No analysis has been completed to determine if the requirement for adequate off-street parking has been provided.

2 – Driveway Length: The second issue is driveway length. This project requires twenty (20) foot setbacks for the houses measured from the front property line. Because the sidewalks are being constructed within easements on private property, there is the potential for driveways to be less than twenty (20) feet in length, which could result in vehicles overhanging the sidewalks and block pedestrian access.

The Hearing Examiner recommends eighteen (18) foot setbacks for the garages from the back of the sidewalk, which the Applicant supported at the public hearing for the PUD. However, if the sidewalk is built within the full limits of the easement, this would not lead to a driveway length of eighteen (18) feet. Staff recommends that the driveway length and garage setbacks be required to be either eighteen (18) feet measured from the back of the sidewalk easement, or a total of twenty (20) feet measured from the back of the sidewalk. The setback for the front of the houses would remain at twenty (20) feet measured from the front property line.

Puget Sound Energy Easement

The Greens Estates Preliminary Subdivision and PUD property includes an undefined Puget Sound Energy (PSE) aerial transmission easement. The Hearing Examiner recommended that the location of this easement be defined prior to Council approval. PSE has submitted a letter to the Applicants outlining the restrictions on use of the easement.

The letter from PSE dated December 12, 2007, states that Puget Sound Energy intends to use this easement for a future transmission line corridor. Within this easement, the roads, and street trees no taller than fifteen (15) feet in height will be allowed. Street lights and fire hydrants, as well as all structures, are prohibited.

Staff Response:

The PSE letter and Use Agreement requires that no structures of any kind, nor other infrastructure be placed within the easement. It also requests access to the easement and a note be placed on the face of the plat.

One concern regarding this letter is that the recreation plans show two (2) active open space areas within the easement. One is the multi-purpose court, which is clearly not allowed by the PSE agreement and must be relocated or redesigned. The other has barbecue's and picnic tables, which may be allowed by the PSE agreement, but that is unclear in the letter. It is likely that the recreation areas can be shifted to other locations, and this can be determined before permit issuance. As this is preliminary approval, the details of the recreation areas can be figured out during the permit review for grading and site development permits. However, due to the tight configuration of the project, in order to comply with the requirements of the PSE letter and Use Agreement, the Applicant may lose lots in order to meet the requirements of the Recreation standards in the Code, under SMC 16.72.

The other issues regarding the location of street lights and fire hydrants, and the height of street trees, need not prohibit approval of the PUD. The locations and types of these improvements can be determined through the permitting phase of the project.

Staff also recommends that the note referenced in the PSE letter be placed on the face of the final plat stating the PSE intends to use this easement. Two conditions of approval should be added to the project approval:

1. A condition stating that the design of the PUD and Plat will conform to the requirements of the PSE Use Agreement, and the Applicant will show compliance with the December 12, 2007 letter from PSE and the Use Agreement prior to permit issuance.
2. A condition stating that the note within the December 12, 2007 requested by PSE be added to the face of the Final Plat.

Police LOS Concurrency

The Greens Estates Preliminary Plat and PUD does not meet the requirements for police concurrency under SMC 16.108. The Hearing Examiner recommends a condition (Condition #3) be placed on the project that requires that the Police LOS be met prior to occupancy of the units of this development.

Staff Response:

The Developer/Applicant agreed during the Open Record Hearing that the Police Services LOS in existence at the time of final building permit inspection would be met before approval of occupancy could be granted. The Applicant accepted this condition, and is not appealing it, because they anticipate that the Police LOS requirements will be revised in the time it would take to develop the plat, obtain final approval, and start building residences.

No further action is requested of or by the Applicant. The Council should be aware that accepting this condition of approval on two applications (Hammer and Greens Estates), as well as Twin River Ranch Estates, also being considered tonight, will further set the policy that this condition will be applied to all future applications that are subject to this Code provision.

RECOMMENDED ACTION:

1. Conduct the Closed Record and Public Appeal Hearing on the Greens Estates Planned Unit Development and Appeal of the Hearing Examiner's decision that the Greens Estates project did not have "sufficient proximity to transit to facilitate transit access".
2. Discuss the issues regarding the panhandle widths, the off-street parking provided, front yard setbacks from the sidewalks, the Puget Sound Energy easement, and police concurrency.
3. Direct staff on how to proceed with these policy issues. Staff will come back to Council with a Resolution after PSE approval has been obtained.

ATTACHMENTS:

1. Hearing Examiner's Recommendation, dated September 19, 2007
2. City Staff Report, dated August 27, 2007
3. Appeal Notice from Sultan 144 LLC, dated October 12, 2007
4. SMC Code Section 2.26.150 (C, D, E, and F)
5. Resolution 08-03A, 08-03B, and 08-03C
6. Greens Estates Preliminary Plat PUD Maps
7. Puget Sound Energy Letter to Mark Villwock, PE, dated December 12, 2007
8. Interpretation of SMC 16.10.110(B)(2)(d) dated May 18, 2006
9. January 17, 2008 Snohomish County Fire Marshall Letter
10. January 3, 2008, Greens Estates Requested Explanation Packet

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HEARING EXAMINER FOR THE CITY OF SULTAN

In Re: GREENS ESTATES PUD AND
PRELIMINARY PLAT APPLICATION

FPPUD05-001

SULTAN 144 LLC'S APPEAL OF THE
HEARING EXAMINER'S DENIAL OF
MOTION FOR RECONSIDERATION

I. RELIEF REQUESTED

Applicant, Sultan 144 LLC ("Sultan 144"), respectfully requests that Council reverse the Examiner's recommendation of denial of the Greens Estates PUD based on proximity to transit, as set forth in the Examiner's September 19, 2007 Decision ("HE Decision") and October 4, 2007 Order Denying Request for Reconsideration ("Order").

Specifically, Sultan 144 requests:

1. That the Council find that the requirements of SMC 16.10.110(B)(2)(d) are met based on the Green Estates' proximity to transit, which is virtually identical to the proximity to transit for the Skoglund Estates project that was previously approved by the Council on June 29, 2006, in Resolution No. 06-09A.

APPEAL OF HEARING EXAMINER'S
PUD DECISION - 1

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
206-447-4400

Exhibit 3

1 ***Development of the type herein will facilitate and increase the prospect of a***
2 ***direct route along Sultan Basin Road. The Council finds that the site is in***
3 ***sufficient proximity in light of these facts to be approved as a PUD.*** (Emphasis
4 added).

5 Land use ordinances should be given a reasonable construction and application in order
6 to serve their purpose and scope. Unreasonable constructions should be rejected. *State ex rel.*
7 *Edmond Meany Hotel, Inc. v. Seattle*, 66 Wn.2d 329, 402 P.2d 486 (1965); *Bartz v. Board of*
8 *Adjustment*, 80 Wn.2d 209, 492 P.2d 1374 (1972). Importantly, as the Washington Supreme
9 Court recently reaffirmed in *Sleasman v. City of Lacey*, 159 Wn.2d 639, 151 P.3d 990 (2007),
10 such ordinances should be strictly construed in favor of the property owner.

11 It must also be remembered that zoning ordinances are in derogation of the
12 common-law right of an owner to use private property so as to realize its highest
13 utility. Such ordinances ***must be strictly construed in favor of property owners***
14 ***and should not be extended by implication to cases not clearly within their***
15 ***scope and purpose.***

16 *Sleasman v. City of Lacey*, 159 Wn.2d 639, 643, 151 P.3d 990 (2007) (fn. 4) (emphasis
17 added).

18 In approving the Skoglund Estates project, the Council endorsed single family PUDs at a
19 distance of 1 mile from the SR-2 bus stop. The same rationale that was the basis for the
20 Skoglund Estates approval applies to the Greens Estates PUD.

21 With all due respect to the Examiner, the Examiner's "good conscience"¹ or opinion on
22 the distance that a majority of Americans are likely to walk² are not legal standards that warrant
23 deviation from the Council's prior interpretation of SMC 16.10.100(B)(2)(d). Moreover, given
24 that the ordinance must be construed in favor of the property owner, the Examiner is not entitled
25 to impose a three-fifth's mile requirement on PUDs when none is found in the Code. *See HE*
26 *Decision*, p. 9 (quoting *Vodnick Lane Decision* that a site three-fifths of a mile from transit
27 "minimally meets the "sufficient proximity" . . . test.")

¹ HE Decision Conclusion 7.

² HE Decision Finding 5.

3.2

1 **B. The Intent of SMC 16.10.110(B)(2)(d) Is To Ensure That PUDs Have**
2 **Similar Transit Access As Similar Development In The Underlying Zone.**

3 The purpose of SMC 16.10.110(B)(2)(d) is not to set some arbitrary and unknowable
4 distance between land that can be developed as a PUD and land that cannot. Rather, it is to
5 ensure that transit access to the PUD-SF would be similar to that for other types of
6 development.

7 The Sultan Municipal Code's PUD provisions do not contain a specific requirement for
8 a certain level of, or distance for, pedestrian access to transit facilities and the requirement of
9 "sufficient proximity" must be read in *pari materia* with the other sections of the Code.

10 For example, SMC 16.10.120(B)(4)(c), which is the requirement that PUDs have
11 effective street networks, establishes the following criteria for transit stops:

12 Transit and school bus routes and transit and school bus stops, either within the
13 development or on the collector or arterials that provide the major access to the
14 proposed development, unless such provision is deemed inconsistent with the
15 transit or school bus routing plans.

16 Thus, a PUD must have a bus stop within the development or on a collector or arterial
17 that provides major access, and no specific distance to the transit stop is established. The
18 requirement facilitates—i.e. makes easier—transit use by requiring a bus stop. Moreover, the
19 requirement to provide a bus stop is conditioned by the phrase "unless such provision is deemed
20 inconsistent with the transit or bus routing plans."

21 The Examiner's interpretation of 16.10.110(B)(2)(d) renders SMC 16.10.110 internally
22 inconsistent because on one hand the regulation acknowledges that transit may be unavailable to
23 a PUD-SF and, on the other, under the Examiner's interpretation, requires that transit be
24 available within approximately three-fifths of a mile.
25
26

1 SMC 16.10.110(B)(2)(f) provides:

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

5 When read together, the requirements of SMC 16.10.110(B)(2)(d), 16.10.110(B)(2)(f),
6 and 16.10.120(B)(4)(c) evidence an intent for PUD-SFs to 1) make access to transit easier than
7 it otherwise might be under the requirements of the underlying zone; 2) install bus stops unless
8 inconsistent with transit plans; and 3) have access to public facilities in a manner that would be
9 similar to that of a development in the underlying zone. The requirement to facilitate transit
10 access must be read reasonably and take into consideration the realities of transit availability in
11 Sultan. That reality is that 1) there is no bus route currently serving Sultan Basin Road; 2) no
12 bus route will be implemented until there is sufficient population on Sultan Basin Road to
13 support it; and 3) currently the closest transit stop to the Greens Estates project is a parking lot
14 for a Park-n-Ride, which means people will likely be driving there, not walking.

15 **C. The Examiner's Interpretation of SMC 16.10.110(B)(2)(d) Violates**
16 **Constitutional Rights of Substantive Due Process and Equal Protection And**
Renders The Ordinance Unconstitutionally Vague.

17 **1. The Examiner's Interpretation of SMC 16.10.110(B)(2)(d) Renders The**
18 **Regulation Unconstitutionally Vague.**

19 *Anderson v. Issaquah*, 70 Wn. App. 64, 851 P.2d 744 (1993), establishes when a land
20 use ordinance should be declared void for vagueness.³

21 [A] statute which either forbids or requires the doing of an act in terms so vague
22 that men of common intelligence must necessarily guess at its meaning and differ
as to its application, violates the first essential of due process of law. ...

23 In the area of land use, a court looks not only at the face of the ordinance but also
24 at its application to the person who has sought to comply with the ordinance
and/or who is alleged to have failed to comply. ... The purpose of the void for
25 vagueness doctrine is to limit arbitrary and discretionary enforcements of the
law. ...

26 ³ See also, *Burien Bark Supply v. King County*, 106 Wn.2d 868, 725 P.2d 994 (1986).

1 *Anderson v. Issaquah*, at 75 (internal citations omitted).

2 Here, it is clear that no one can determine what distance away from transit constitutes
3 “sufficient proximity.” City staff and the City Council apparently agree that one mile is
4 sufficiently proximate, whereas the Examiner believes that three-fifths of a mile is a better
5 number. This type of guesswork is precisely what is prohibited by *Anderson v. Issaquah*.
6 Additionally, it is arbitrary to deny a project that is actually 0.002 miles closer to the transit stop
7 than a project that has been approved.

8 In his Order, the Examiner candidly acknowledges that he is shooting in the dark with
9 his interpretation—noting that he “did his best” but that “the SMC needs measurable standards
10 to determine compliance with the criteria.” Order p. 3. The Examiner concluded that he
11 “sincerely hopes that the Council will establish a quantifiable measure by which compliance
12 with SMC 16.10.110(B)(2)(d) may be determined. . . .”

13 Council has established 1.0 mile as a quantifiable measure for compliance. This
14 measure requires approval of the Greens Estates PUD.

15 **2. The Examiner’s Interpretation of SMC 16.10.110(B)(2)(d) Violates**
16 **Substantive Due Process.**

17 “Due process requires governments to treat citizens in a fundamentally fair manner.”
18 *Valley View Industrial Park v. City of Redmond*, 107 Wn.2d 621, 636, 733 P.2d 182 (1987).
19 In *Presbytery of Seattle v. King County*, the Washington Supreme Court explained the
20 substantive due process doctrine as follows:

21 To determine whether the regulation violates [substantive] due process, the court
22 should engage in the classic 3-prong due process test and ask: (1) whether the
23 regulation is aimed at achieving a legitimate public purpose; (2) whether it uses
24 means that are reasonably necessary to achieve that purpose; and (3) whether it is
25 unduly oppressive on the land owner. “In other words, 1) there must be a public
26 problem or ‘evil,’ 2) the regulation must tend to solve this problem, and 3) the
27 regulation must not be ‘unduly oppressive’ upon the person regulated.” The
28 third inquiry will usually be the difficult and determinative one.

29 The “unduly oppressive” inquiry lodges wide discretion in the court and implies
30 a balancing of the public’s interest against those of the regulated landowner. We
31 have suggested several factors for the court to consider to assist it in determining

35

1 whether a regulation is overly oppressive, namely: the nature of the harm sought
2 to be avoided; the availability and effectiveness of less drastic protective
measures; and the economic loss suffered by the property owner. ...

3 If the regulation is not aimed at a legitimate public purpose, or uses a means
4 which does not tend to achieve it, or if it unduly oppresses the landowner, then
5 the ordinance will be struck down as violative of due process and the remedy is
invalidation of the regulation. No compensation (which properly belongs with a
"taking" analysis) is warranted in the face of a due process violation.

6 *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 330-332, 787 P.2d 907 (1990) (internal
7 citations omitted).

8 The Examiner's interpretation of SMC 16.10.110(B)(2)(d) does not foster a legitimate
9 public purpose. While it may be a laudable public goal to provide access to public
10 transportation, it is unfair to thwart a development merely because the property is located on a
11 road that is currently not served by public transportation, when there is no Code provision that
12 requires this result. It is also unfair to draw an arbitrary line for where PUDs will be allowed in
13 Sultan when no such line is provided for in the Code.

14 The Examiner's interpretation is unduly oppressive. A regulation is unduly oppressive,
15 in violation of the third prong of substantive due process, when it is more burdensome than
16 necessary to serve its purpose.

17 Here, a property-owner cannot move the land to another location. There is no indication
18 in the Code that the Council ever intended to exclude all land within the City from PUD
19 consideration if it was more than three-fifths of a mile from the SR-2 bus stop.

20 Sultan 144 was entitled to rely upon a reasonable interpretation of the City's PUD
21 regulations, including the staff interpretations for both the Skoglund and Greens projects and the
22 Council's action approving the Skoglund PUD. As a result, Sultan 144 has millions of dollars
23 at risk with its Greens Estates development. By prohibiting otherwise permitted development,
24 the Examiner's interpretation, if adopted by Council, would greatly devalue Sultan 144's
25 property and other similarly situated properties.
26

1 **3. The Examiner's Decision Violates Equal Protection.**

2 The Equal Protection Clause of the Fourteenth Amendment commands that no State
3 shall "deny to any person within its jurisdiction the equal protection of the laws," which is
4 essentially a direction that all persons similarly situated should be treated alike. *Plyler v. Doe*,
5 457 U.S. 202, 216, 102 S.Ct. 2382, 2394, 72 L.Ed.2d 786 (1982).

6 Equal protection requires that (1) legislation treats all members within the designated
7 class alike, (2) there are reasonable grounds to distinguish between those within and those
8 outside the class, and (3) the classification has a rational relationship to the purpose of the
9 enactment. *Paulson v. County of Pierce*, 99 Wn.2d 645, 652-53, 664 P.2d 1202 (1983), *appeal*
10 *dismissed*, 464 U.S. 957, 104 S.Ct. 386, 78 L.Ed.2d 331 (1983).

11 In *Grader v. City of Lynnwood*, 45 Wn. App. 876, 728 P.2d 1057 (1986), the city, as a
12 condition of development, interpreted its nonconforming use provisions to require a developer
13 of one property to bring into compliance an existing structure that he owned on a second
14 property. This interpretation failed the second part of the equal protection test because it
15 unfairly treated a developer with two properties different than a developer with a single
16 property. *Grader*, at 881-882.

17 The classification created by the Examiner's interpretation of SMC 16.10.110(B)(2)(d)
18 fails the equal protection test for the same reason. Here, if the Council adopts the Examiner's
19 interpretation, Sultan 144's Greens project would be treated differently than its Skoglund
20 project even though both developments are located at virtually the same distance from the SR2
21 transit stop. The Examiner's interpretation also wrongfully impacts other developments
22 because a developer whose project is located a mile away from the SR2 bus stop would be
23 treated differently from a developer whose property is located closer to the bus stop even though
24 the regulation does not create a basis for the distinction; the first developer had nothing to do
25 with the location of the SR2 bus stop; and the developer has no power to compel the transit
26 authority to add a bus route on Sultan Basin Road.

1 In short, it was fundamentally unfair, and a violation of equal protection, for the
2 Examiner to recommend denial of the Greens Estates project when it presents the same factual
3 circumstances as the Skoglund Estates project. See also, *Sabin v. Skagit County*, 136 Wn. App.
4 869, 152 P.3d 1034 (2006) (County could not repeatedly reverse the reasonable interpretation of
5 its own ordinance).

6 **III. CONCLUSION**

7 For the foregoing reasons, Sultan 144 respectfully requests that the Council reject the
8 Examiner's recommendation, find that the Greens Estates project is compliant with
9 SMC 16.10.110(B)(2)(d), and approve the PUD.

10
11 Respectfully submitted this 12th day of October 2007

12
13 FOSTER PEPPER PLLC

14 

15 Patrick J. Mullaney, WSBA No. 21982
16 Attorney for Applicant Sultan 144 LLC

RECEIVED
OCT 12 2007

By: _____

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HEARING EXAMINER FOR THE CITY OF SULTAN

In Re: GREENS ESTATE PUD AND
PRELIMINARY PLAT APPLICATION

FPPUD05-001

DECLARATION OF MARK
VILLWOCK, P.E. IN SUPPORT OF
SULTAN 144 LLC'S MOTION FOR
RECONSIDERATION

I, MARK VILLWOCK, declare under penalty of perjury and the laws of the State of Washington that the following is true and correct and based upon my own personal knowledge.

1. I am over eighteen years of age and competent to testify in this matter.

2. I am employed as a Project Manager with LDC, Inc. and am a registered professional engineer in the State of Washington. In that capacity, I have been employed on the Greens Estates PUD and Preliminary Plat applications and testified at the recent public hearing on the PUD.

3. Following receipt of the Examiner's decision denying the PUD based upon the proximity to transit criteria (SMC 16.10.110(B)(2)(d)), I calculated the distance from the Greens PUD to the Park-n-Ride bus stop on SR 2 using Graphical Information System ("GIS") software. This program enables very accurate measurements of distance.

DECLARATION OF MARK VILLWOCK - 1

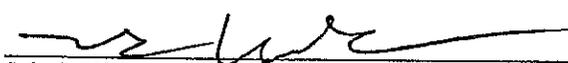
FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
206-447-4400

1 4. I calculated the distance from the proposed bus stop on the Greens property to
2 the SR 2 park-n-ride along the alignment of the existing and proposed walkway along Sultan
3 Basin Road and SR 2. A copy of the walkway exhibit, which was presented at the hearing is
4 attached as Exhibit 1.

5 5. This distance is 0.992 miles. Previously, I performed a similar analysis for the
6 Skoglund PUD. The proximity to transit distance for the Skoglund PUD was 0.994 miles,
7 which the Sultan City Council, in approving that PUD, concluded was adequate for purposes of
8 (SMC 16.10.110(B)(2)(d).

9 6. Attached as Exhibit 2 is a aerial photograph showing the proximity to transit for
10 both the Skoglund and Greens projects. As can be seen from Exhibit 2, the difference in
11 distance to the SR 2 park-n-ride is negligible (under 100 feet).

12
13 EXECUTED at Woodville, Washington this 28 day of September 2007.

14
15 
16 _____
Mark Villwock, P.E.

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DECLARATION OF MARK VILLWOCK - 2

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
206-447-4400

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 reconvened 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.

Note: Accepts recommendation of Hearing Examiner, denies Application, and returns Application to Applicant for modification.

**CITY OF SULTAN
Sultan, Washington**

RESOLUTION NO. 08-03A

A RESOLUTION OF THE CITY OF SULTAN ACCEPTING THE HEARING EXAMINER'S RECOMMENDATION AND DENYING THE SULTAN 144, LLC PLANNED UNIT DEVELOPMENT AND SUBDIVISION APPLICATION FOR A 63 LOT PLANNED UNIT DEVELOPMENT (GREENS ESTATES) AND RETURNING THE APPLICATION TO THE APPLICANT FOR MODIFICATION

WHEREAS L43-1 Greens filed an initial application for approval of Greens Estates, a 107-lot Planned Unit Development (PUD) subdivision for single family development;

WHEREAS Sultan 144, LLC acquired portions of the property and the pending application and revised the application to seek approval of a 63-lot single-family residential Planned Unit Development (PUD) subdivision;

WHEREAS an open record hearing occurred before the City's Hearing Examiner on September 11, 2007 on the revised application, the City Hearing Examiner issued a Recommendation dated September 19, 2007, and the applicant by October 12, 2007 appealed the Recommendation and requested a closed record hearing;

WHEREAS the application came before the City Council for a closed record hearing and appeal by the applicant on the "Recommendation" on December 13, 2007;

WHEREAS the City Council has determined based upon a review of the open record hearing to accept the Hearing Examiner's Findings of Fact and Conclusions of Law.

NOW, THEREFORE:

- A.** The City Council accepts the Recommendation of the Hearing Examiner dated September 19, 2007, including the Findings of Fact and Conclusions of Law therein.
- B.** The Greens Estates Planned Unit Development is hereby denied and the application is hereby returned to the applicant for modification to meet approval criteria.

PASSED BY THE Sultan City Council and **APPROVED** by the Mayor this ____ day
of _____ 2007.

CITY OF SULTAN

By _____
Carolyn Eslick, Mayor

Attest:

By _____
Laura Koenig, City Clerk

By _____
Council Member Flower

By _____
Council Member Champeaux

By _____
Council Member Blair

By _____
Council Member Slawson

By _____
Council Member Davenport-Smith

By _____
Council Member Doornek

By _____
Council Member Wiediger

Note: Rejects recommendation of hearing examiner, accepts hearing examiner findings of fact and some conclusions of law, makes other differing conclusions of law, grants application for PUD plat approval.

**CITY OF SULTAN
Sultan, Washington**

RESOLUTION NO. 08-03B

**A RESOLUTION OF THE CITY OF SULTAN
REJECTING THE HEARING EXAMINER'S
RECOMMENDATION, MAKING DIFFERING
CONCLUSIONS OF LAW AND ACCEPTING THE
SULTAN 144, LLC PLANNED UNIT
DEVELOPMENT AND SUBDIVISION
APPLICATION FOR A 63 LOT PLANNED UNIT
DEVELOPMENT (GREENS ESTATES)**

WHEREAS L43-1 Greens filed an initial application for approval of Greens Estates, a 107-lot Planned Unit Development (PUD) subdivision for single family development;

WHEREAS Sultan 144, LLC acquired portions of the property and the pending application and revised the application to seek approval of a 63 lot single-family residential Planned Unit Development (PUD) subdivision;

WHEREAS an open record hearing occurred before the City's Hearing Examiner on September 11 2007. The City Hearing Examiner issued a Recommendation dated September 19, 2007, and the applicant by Appeal dated October 12, 2007 appealed the Recommendation and requested a closed record hearing;

WHEREAS the application came before the City Council for a closed record hearing and appeal by the applicant on the "Recommendation" on January 24, 2008;

WHEREAS the City Council has determined based upon a review of the open record hearing to accept the Hearing Examiner's Findings of Fact and to accept some of the Hearing Examiner's Conclusions of Law and to make certain of its own Conclusions of Law;

NOW, THEREFORE:

A. The City Council rejects the Recommendation of the Hearing Examiner dated September 19, 2007.

- B. The City Council hereby accepts the Hearing Examiner's Findings of Fact.
- C. The City Council hereby adopts the Hearing Examiner's Conclusions of Law 1, 3, 9-10, 12-18, 24-31 and makes its own Conclusions of Law as follows:

Substitute Conclusion of Law 2: As subsequent conclusions will establish, Greens satisfies the location criteria for a PUD, and satisfies right of way width requirements of SMC 16.10.120 (B)(4)(b).

Substitute Conclusions of Law 4 -7: Greens Estates is about one mile from the nearest transit stop, a park and ride, and is generally situated similarly to Skoglund Estates, a PUD which this council has approved. The site fronts and has direct access on Sultan Basin Road. As recorded in the Findings of Fact, the applicant proposes to provide a bus pullout at the southwest corner of the site along Sultan Basin Road. SMC 16.10.110 B (2)(d) requires a PUD to be located such that "Transit is available in sufficient proximity to the site to facilitate transit access to the PUD-SF." This criteria does not require that the PUD be in sufficient proximity to facilitate "residents" in the PUD pedestrian access to a transit site. This criteria requires that "transit" is available in sufficient proximity "to facilitate transit access to the PUD-SF." This site, fronting on Sultan Basin Road achieves this facilitation of transit. Only sites not on a realistic potential transit route must be examined for pedestrian access to determine compliance with this location requirement.

Substitute Conclusion of Law 8: SMC 16.10.120 B allows variance of development standards in a PUD. Here the applicant proposes a conventional street, including sidewalks but proposes that the dedicated right of way be narrower, and that parts of the sidewalks be on public easements held by the City. Such modification of street standards is permitted under SMC 16.10.120 (B)(4)(b), and here it results in increased open space and larger lots for the project. The Council concludes that development of a full street and sidewalk in this fashion satisfies the requirements of 16.10.120 B so long as adequate clearance is preserved between the front of the garage and the back of the sidewalk for an eighteen foot vehicle, and such a condition is a condition of approval. Therefore, the Applicant shall create Covenants, Conditions and Restrictions on the project, to be recorded at the time of final plat approval, providing that garages whose vehicular door(s) face a street with reduced right-of-way and a sidewalk easement must maintain a 20-foot setback between the back edge of the sidewalk and the near face of the garage.

Substitute Conclusion of Law 11: SMC 16.150.010 (3) defines access for a lot. It provides in pertinent part "a lot shall abut by no less than 20 feet upon and have direct access to: (A) an opened, constructed and maintained public road;..." In this application, the applicant has designed access panhandles for a number of lots that are 15 feet wide and that flare at the sidewalk to 20 feet wide. The flared

panhandles result in larger lots for the future homeowners. Moreover, since the Fire Marshal has confirmed that the 15-foot wide flared panhandles provided adequate emergency vehicle access, the Council finds that the short access flares and reduced panhandle widths satisfy the requirements of SMC 16.150.010 (3).

D. Based on the foregoing, the Council imposes the following additional conditions on the project:

Revised Condition 5(d): Garages whose vehicular door(s) face a street with reduced right-of-way and sidewalk easements must maintain a twenty (20) foot setback between the back edge of sidewalk and the near face of the garage.

Revised Condition 12: Roads A, B, C, and E will provide the standard City of Sultan Road Section within a reduced right-of-way (50 feet instead of 60 feet) and will place the required sidewalks within easements on private property. Roads D and F, as shown on the preliminary plans, are permitted to deviate from the design standards. Roads D and F have a reduced right-of-way width (50 feet instead of 60 feet) and have eliminated one (1) parking lane. Sidewalks will be within the right-of-way for Roads D and F.

Revised Condition 33: The project shall comply with the Consent for Use of Puget Sound Energy, Inc. Transmission Line Easement executed by Sultan 144, LLC on December 13, 2007, and the Consent shall be recorded prior to approval of the final plat.

E. The Greens Estates Planned Unit Development is hereby approved for a 63-lot planned unit development and subdivision on the conditions as reviewed and revised by the hearing examiner and as further revised by Substitute Conclusion of Law 8 and paragraph D above.

PASSED BY THE Sultan City Council and **APPROVED** by the Mayor this ____ day of _____ 2008.

CITY OF SULTAN

By _____
Carolyn Eslick, Mayor

Attest:

By _____
Laura Koenig, City Clerk

Note: Accepts recommendation of hearing examiner, accepts hearing examiner findings of fact and some conclusions of law, makes other differing conclusions of law, denies application for PUD plat approval (based on driveway flares) and remands to hearing examiner and applicant to modify application .

**CITY OF SULTAN
Sultan, Washington**

RESOLUTION NO. 08-03C

**A RESOLUTION OF THE CITY OF SULTAN
ACCEPTING THE HEARING EXAMINER'S
RECOMMENDATION TO DENY APPROVAL AND
REMANDING TO APPLICANT TO MAKE
MODIFICATIONS, MAKING DIFFERING
CONCLUSIONS OF LAW AND REJECTING THE
CURRENT SULTAN 144, LLC PLANNED UNIT
DEVELOPMENT AND SUBDIVISION
APPLICATION FOR A 63 LOT PLANNED UNIT
DEVELOPMENT (GREENS ESTATES)**

WHEREAS L43-1 Greens filed an initial application for approval of Greens Estates, a 107-lot Planned Unit Development (PUD) subdivision for single family development;

WHEREAS Sultan 144, LLC acquired portions of the property and the pending application and revised the application to seek approval of a 63 lot single-family residential Planned Unit Development (PUD) subdivision;

WHEREAS an open record hearing occurred before the City's Hearing Examiner on September 11 2007 on the revised application, the City Hearing Examiner issued a Recommendation dated September 19, 2007, and the applicant by Sultan 144 LLC's Appeal received October 12, 2007 appealed the Recommendation and requested a closed record hearing;

WHEREAS the application came before the City Council for a closed record hearing and appeal by the applicant on the "Recommendation" on December 13, 2007;

WHEREAS the City Council has determined based upon a review of the open record hearing to accept the Hearing Examiner's Findings of Fact and to accept some of the Hearing Examiner's Conclusions of Law and to make certain of its own Conclusions of Law;

WHEREAS this closed record hearing and/or appeal raises three issues (1) whether the application satisfies the transit proximity requirement of SMC 16.10.110 B(2)(d), 2. whether the road profile consisting of a 50 foot dedication, and a 10 foot easement for sidewalks satisfies the modification criteria of SMC 16.10.120 B(4)(b), and 3. whether lots with access panhandles 15 feet wide, flaring to 20 feet at the lot/dedication line satisfy the 20 foot abut requirement of SMC 16.150.010 (3);

NOW, THEREFORE:

- A. The City Council accepts the Recommendation of the Hearing Examiner dated September 19, 2007 to deny approval, rejects and denies the preliminary plat and PUD as currently configured, and remands the application back to the applicant for modification.
- B. The City Council hereby accepts the Hearing Examiner's Findings of Fact.
- C. The City Council hereby adopts the Hearing Examiner's Conclusions of Law 1, 3, 9-7, 9-10, 12-32 and makes its own Conclusions of Law as follows:

Substitute Conclusion of Law 2: As subsequent conclusions will establish, Greens satisfies the location criteria for a PUD, and satisfies right of way width requirements of SMC 16.10.120 (B)(4)(b).

Substitute Conclusions of Law 4 -7: Greens Estates is about one mile from the nearest transit stop, a park and ride, and is generally situated similarly to Skoglund Estates, a PUD which this council has approved. The site fronts and has direct access on Sultan Basin Road. As recorded in the Findings of Fact, the applicant proposes to provide a bus pullout at the southwest corner of the site along Sultan Basin Road. SMC 16.10.110 B (2)(d) requires a PUD to be located such that "Transit is available in sufficient proximity to the site to facilitate transit access to the PUD-SF." This criteria does not require that the PUD be in sufficient proximity to facilitate "residents" in the PUD pedestrian access to a transit site. This criteria requires that "transit" is available in sufficient proximity "to facilitate transit access to the PUD-SF." This site, fronting on Sultan Basin Road achieves this facilitation of transit. Only sites not on a realistic potential transit route must be examined for pedestrian access to determine compliance with this location requirement.

Substitute Conclusion of Law 8: SMC 16.10.120 B allows variance of development standards in a PUD. Here the applicant proposes a conventional street, including sidewalks but proposes that the dedicated right of way be narrower, and that parts of the sidewalks be on public easements held by the city. Though in the modification of street standards under SMC 16.10.120 (B)(4)(b) separation of streets from sidewalks, and the creation of additional parking is encouraged, it is not required. The council concludes that development of a full

street and sidewalk in this fashion satisfies the requirements of 16.10.120 B so long as adequate clearance is preserved between the front of the garage and the back of the sidewalk, for an eighteen foot vehicle, and such condition is a condition of approval.

Substitute Conclusion of Law 11: SMC 16.150.010 (3) defines access for a lot. It provides in pertinent part “a lot shall abut by no less than 20 feet upon and have direct access to: (A) an opened, constructed and maintained public road;...” In this application, the applicant has designed access panhandles for a number of lots that are 15 feet wide and that flare at the sidewalk to 20 feet wide. Council’s intent with this requirement was that access panhandles be twenty feet wide to private appropriate emergency access, and appropriate ingress and egress for two vehicles, one in turning into the property and the other in accessing the property. The short access flares and reduced panhandle widths do not satisfy the requirements of SMC 16.150.010 (3).

PASSED BY THE Sultan City Council and **APPROVED** by the Mayor this ____ day of _____ 2007.

CITY OF SULTAN

By _____
Carolyn Eslick, Mayor

Attest:

By _____
Laura Koenig, City Clerk

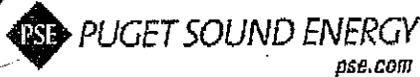
By _____
Council Member Flower

By _____
Council Member Champeaux

By _____
Council Member Blair

By _____
Council Member Slawson

The energy to do great things



December 12, 2007

Ref: 066605

Mark Villwock, P.E.
Land Development Consultants, Inc.
14201 NE 200th Street, Ste. 100
Woodinville, WA 98072

Dear Mr. Villwock:

I have reviewed the road and landscaping plans you provided. The road plans you provided us did not show proposed utility locations. Per the request of our transmission engineers, we are making it a condition of the consent that no utilities or other infrastructure be placed south of the centerline of the road that runs parallel with the easement.

Although it is a standard condition of the consent that no trees with a mature height of 15 feet be planted within the easement area, we are asking that you not place trees along the roads crossing the easement; this creates a barrier to access.

Among other items covered in the consent, fencing, while not prohibited, should provide access, and preferably, not be made of metal. If the fencing does have metal components, these should be grounded.

There is a note on several pages of the drawings we are asking you to change. The note states:

"Puget Sound Energy Easement A.F. No. 51178 unplotable and undetermined width location and size determined by extending the easement from the Skoglund property as agreed by PSE."

This note is inaccurate in that PSE did not agree to that determination, it is plottable and has a determined width and location as evidenced by the survey "PSE RIGHT-OF-WAY EXHIBIT FOR SULTAN 144, LLC, produced by Concept Engineering, Inc. Please reference your survey in this note, remove all but the reference to the Auditor's File Number, or remove the note.

Additionally, Puget Sound Energy is asking you to include the following language with the notes on the plat, primarily as public notice of the proximity of and conditions associated with PSE's easement and the Consent:

Transmission or distribution lines have been or will be constructed, operated, and maintained within the Puget Sound Energy (PSE) easement area. At no time shall PSE's existing transmission line easement (shown hereon) be used for storage of flammable or volatile material or placement of any buildings or other structures, including but not limited to the following: decks, patios, septic drainfields, and outbuildings of any nature. At no time shall PSE's access to the transmission lines or structures along the easement area be permanently blocked off or unduly restricted.

The developer or future lot owners must pay for any and all costs associated with changes in vertical line clearance, re-stabilization of any electrical structure or anchor, or facilities access as a result of uses that do not comply with PSE conditions or restrictions outlined hereon.

Attachment 7

PSE's facilities may require tree and brush cutting within and adjacent to the easement right-of-way. PSE retains the right to cut, remove and dispose of any and all brush, trees, and other vegetation upon the easement area. PSE shall also have the right to control, on a continuing basis and by any prudent and reasonable means, the establishment and growth of bushes, trees and other vegetation upon the easement areas which, in the opinion of PSE, interfere with the exercise of PSE rights or create a hazard to PSE's systems. PSE shall have the right to cut, trim, remove and dispose of any trees located on the property outside of the easement area, which could, in PSE's sole judgment, interfere with or create a hazard to PSE's systems. PSE shall, prior to the exercise of such rights, identify such trees and make a reasonable effort to give prior notice that such trees will be cut, trimmed, removed or disposed of (except that PSE shall have no obligation to identify such trees or give such prior notice when trees are cut, trimmed, removed or otherwise disposed of in response to emergency conditions). Owners shall be entitled to no compensation for trees cut, trimmed, removed or disposed of, except for the actual market value of merchantable timber (if any) cut and removed from the property by PSE. All shrubs and trees to be situated in the easement area must be of a low-growing variety that normally do not exceed 15 feet in height at maturity.

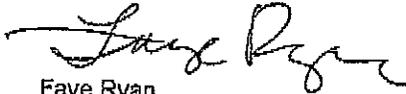
I am including the Consent for Use document for Greens Estates with this letter. Please sign and notarize the document and return it to me at:

Puget Sound Energy
Attn: ROW Dept.
1700 East College Way
Mount Vernon, WA 98273

Also, please send a full preliminary plan set with the changes PSE has requested. We will finalize the Consent after these changes have been made.

If you have any questions, concerns or suggestions regarding the consent or the language above, please call me at 360-424-2959.

Sincerely,



Faye Ryan
Real Estate Representative
Northern Region

RETURN ADDRESS:

**Puget Sound Energy, Inc.
Attn: ROW Department
1700 East College Way
Mount Vernon, WA 98273**

**CONSENT FOR USE OF PUGET SOUND ENERGY, INC.
TRANSMISSION LINE RIGHT-OF-WAY**

This Agreement is made between **Puget Sound Energy, Inc.**, "PSE" herein, and **Sultan 144, LLC** "Owner/Company" herein:

PSE plans and reserves the right to build transmission facilities within its right-of-way in the Northeast quarter of the Northwest quarter of Section 33, Township 28 North, Range 8 East, W.M. The location and extent of PSE's easement rights, "Easement Area" herein, are more specifically described in the document recorded under Auditor's File Number 511778 and supported by maps on file with the Real Estate Department at Puget Sound Energy.

The Owner/Company desires the consent of PSE to utilize portions of the Easement Area in connection with the development of the proposed plat of Greens Estates, more particularly for the following described uses:

- A. Crossing the Easement Area with portions of three improved roadways, 324th Avenue SE, 325th Court SE and 326th Court SE together with non-metallic storm sewer, sanitary sewer, water lines and other residential infrastructure.
- B. Constructing a portion of roadway, 134th Place SE, linearly within and extending no more than 25 feet into the easement area as measured from the Northern boundary of said easement area for an approximate distance of 500 feet. No utilities or infrastructure other than said road are to be constructed in the easement area.
- C. Creating active open space within the remaining easement area.

All as shown on the plans dated _____, marked Exhibit "A" attached hereto and made a part hereof.

With this consent, Owner/Company agrees to:

- A. Provide a 20 foot wide apron/transition from the West side of 324th Avenue SE, the East side of 325th Court SE and the East side of 326th Court SE, with curb cut or rolled curb, to allow heavy line truck access (H2O loading).
- C. Place no fire hydrants, street lighting, or structures of any kind within the easement area.
- D. Owner/Company, on behalf of itself, its successors and assigns, hereby covenants not to directly or indirectly, in any form or in any manner, oppose, protest, inhibit, prevent, or otherwise impair PSE's exercise of any right granted hereunder, without limitation, including rights granted by easement, and specifically including Grantee's right to upgrade or construct transmission facilities. Without limiting the generality of the foregoing, Owner/Company, on behalf of itself, its successors and assigns, hereby covenants not to participate, directly or indirectly, in any appeal of the issuance of any governmental approval or environmental documents necessary for or related to all or any part of rights granted by easement. Grantee may, in its sole discretion, seek specific performance of this covenant (including without limitation an injunction) against Owner/Company, and Owner/Company's successors and assigns, in any court with jurisdiction. Owner/Company and PSE intend these covenants to run with the land, to bind all successors and assigns of Owner/Company, and inure to the benefit of all PSE's successors and assigns.

As between the parties, it is mutually agreed that the Owner/Company may utilize the Easement Area for the above described uses, subject to the following terms and conditions:

1. If such use of the Easement Area should at any time become a hazard to the presently installed electrical facilities of PSE, or electrical facilities added or constructed in the future, or should such use interfere with the construction, operation, inspection, maintenance or repair of the same or with PSE's access along such Easement Area, the Owner/Company will be required to correct such hazard or interference, at Owner/Company's expense.
2. No filling and/or grading within said easements shall be accomplished in such manner as to reduce vertical distance between the ground surface and PSE's wires or jeopardize the lateral support of any of PSE's poles or anchors. No excavation will be permitted within fifty (50) feet of said poles or anchors. Owner/Company must pay for any and all costs related to changing the vertical line clearances in any way as a result of their uses.
3. A minimum clearance of twenty (20) feet from all power lines must be observed in any activities related to such uses, including the operation of equipment.
4. At no time shall the Easement Area be used for the storage of flammable or volatile material or the placement of any buildings or any other structures, including, but not limited to, the following: Decks, patios, and out buildings of any kind or nature.
5. At no time shall PSE's access to transmission line structures along the Easement Area be permanently blocked off or unduly restricted. Fences constructed within the Easement Area shall have removable sections and/or gates to facilitate vehicular access at any and all times. Landscaping must not interfere with such access. Any construction within the said Easement Area must be consistent with the above-mentioned restrictions.
6. Transmission and distribution lines have been or will be constructed, operated, and maintained within the Easement Area. Said facilities may require tree and brush cutting within and adjacent to the easement right-of-way. PSE retains the right to cut, remove and dispose of any and all brush, trees, and other vegetation presently existing upon the Easement Area. PSE shall also have the right to control, on a continuing basis and by any prudent and reasonable means, the establishment and growth of brush, trees and other vegetation upon the Easement Area which, in the opinion of PSE, interfere with the exercise of PSE rights or create a hazard to PSE's systems.
7. PSE shall have the right to cut, trim, remove and dispose of any trees located on the Property outside the Easement Area, which could, in PSE's sole judgment, interfere with or create a hazard to PSE's systems. PSE shall, prior to the exercise of such rights, identify such trees and make a reasonable effort to give Owner/Company prior notice that such trees will be cut, trimmed, removed or disposed of (except that PSE shall have no obligation to identify such trees or give Owner/Company such prior notice when trees are cut, trimmed, removed or otherwise disposed of in response to emergency conditions). Owner/Company shall be entitled to no compensation for trees cut, trimmed, removed or disposed of except for the actual market value of merchantable timber (if any) cut and removed from the Property by PSE.
8. All shrubs and trees to be situated in the Easement Area must be of low growing varieties which normally do not exceed fifteen (15) feet in height at maturity.
9. The Owner/Company releases PSE and will assume all risk of loss, damage or injury, which may result from such use of the Easement Area, except the portion of such loss, damage or injury caused by or resulting from the negligence of PSE or PSE's agents or employees. Any damage to PSE's facilities caused by or resulting from such use of the Easement Area may be repaired by PSE and the actual cost of such repair shall be charged against and paid by the Owner/Company. The Owner/Company further agrees to defend, indemnify and hold harmless PSE, its agents and employees from all loss, damage or injury to any person whomsoever to the extent such loss, damage or injury results from the use of the Easement Area by the Owner/Company, their servants, agents, employees and contractors.
10. PSE does not own the land within the Easement Area. If you are not the Owner of such lands, you must acquire rights for such use from the landowner.
11. The Owner/Company must notify PSE's Construction Management Service Center at least 48 hours prior to the commencement of any and all construction activities related to such uses and to coordinate the installation of protective barriers around power poles.
12. The terms and conditions herein contained shall be binding upon the parties hereto, their respective successors and assigns.

Approved:

PUGET SOUND ENERGY, INC.

By: _____
Real Estate

Date: _____

Agreed to and Accepted:

By: JEFFREY E HAMILTON
CFO OF SULTAN 144, LLC

Date: 12/13/07

STATE OF WASHINGTON)
) SS
COUNTY OF)

On this _____ day of _____, 2007, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the person who signed as _____ for PUGET SOUND ENERGY and who executed the within and foregoing instrument and acknowledged said instrument to be _____ free and voluntary act and deed for the uses and purposes therein mentioned; and on oath stated that _____ was authorized to execute the said instrument as _____ of said PUGET SOUND ENERGY.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

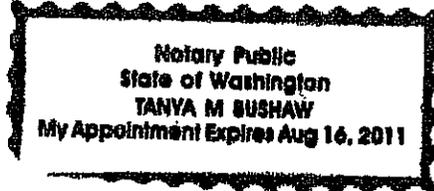
(Print or stamp name of Notary)
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Appointment Expires: _____

Notary seal, text and all notations must not be placed within 1" margins

STATE OF WASHINGTON)
) SS
COUNTY OF King)

On this 13th day of December, 2007, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jeffrey E. Hamilton, to me known or proved by satisfactory evidence to be the person who signed as CFO of SULTAN 144, LLC, the limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be his/her free and voluntary act and deed and the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned; and on oath stated that he/she was authorized to execute the said instrument on behalf of said limited liability company.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.



Tanya Bushaw
(Signature of Notary)

Tanya Bushaw
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State of Washington,
residing at Seattle, WA
My Appointment Expires: 8/16/2011

Notary seal, text and all notations must not be placed within 1" margins

Date: May 18, 2006

To: John Gault Hearing Examiner

From: Rick Cisar Director of Community Development

Subject: Interpretation of SMC 16.10.110 (B) (2.) (d.)

Dear Mr. Gault,

I have considered your recent comments and recommendations regarding the provision for Transit access from Planned Unit Development (PUD) subdivisions and do not agree with your interpretation of the PUD code based on the following:

SMC 16.10.110 (B.) (2.) (d.) reads as follows:

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

The purpose of this section is to provide for transit access to the PUD-SF or provide service to the site not the reverse requiring the site to be located in close proximity to a transit stop for pedestrian access. No where in this section is pedestrian access required.

Further consideration should be given to Section SMC 16.10.110(B.) (2)(d.) along with SMC 16.10.120 (B.) (4.) (c.) (i) which reads as follows

c. PUDs shall provide effective street networks. New development shall also provide multiple access points to existing streets and plan for access to future adjacent developments. Effective street networks should include the following:

- i. Transit and school bus routes and transit and school bus stops, either within the development or on the collector or arterials that provide the major access to the proposed development, unless such provision is deemed inconsistent with the transit or school bus routing plans.

- ii. Alternative routes from points within and outside the development, thereby lessening congestion on arterials.

- iii. Direct and efficient emergency vehicle response to all points within the proposed development.

- iv. Vehicular and pedestrian routes between neighborhoods within the proposed development without requiring all traffic to use arterials between neighborhoods.

- v. Minimizing travel distances and providing nonmotorized alternatives to help reduce noise and air pollution.

Attachment 8

Would therefore require the applicant locate a transit site within the development unless Community Transit determines it is inconsistent with their routing plans.

Lastly, you noted the applicant might be able to modify the application to meet the standards of a Cluster Subdivision which would eliminate the requirements of SMC 16.10.110(B) (2) (d). However, I conclude this is not necessary because of my interpretation of the Transit question. Moreover, SMC 16.10.110(B) (2) (f) which reads as follows:

f. The PUD-SF is located with respect to schools, parks, playgrounds, and other public facilities such that the PUD will have access to these facilities in the same degree as would development in a form generally permitted by the underlying zoning in the area. If it were determined that access to transit is a requirement then this section would eliminate any distance requirements.

January 17, 2008



14201 NE 200th Street

Suite 100

Woodinville, WA 98072

Voice (425) 806-1869

Fax (425) 482-2893

Attn: Mr. Brad Collins,
Community Development Manager
City of Sultan
319 Main Street, Suite 200
Sultan WA 98294

Re: Greens - Fire Marshall Letter
Proposed Plat of Greens Estates
Single Family Residential Planned Unit Development

Dear Mr. Collins:

Attached is memo received from the Snohomish County Marshall from the review of the Greens Project. Fire Marshall Ron Tangen was provided plans dated January 16, 2007. The only change to the plans dated December 19, 2007 was a temporary Turn around was added to the end of 324th Ave SE per Mr. Tangen's request.

The fire Marshall reviewed this entire project for Fire Apparatus Access including the proposed Pan Handle Lots and road circulation. As was stated in the attached memo the proposed site plan meets the County's Code.

Please review the provided information above and contact me with any questions or comments you may have.

Sincerely,

LAND DEVELOPMENT CONSUSLTANTS, INC.

Mark Villwock, P.E.
Project Engineer

Attachment 9

MEMORANDUM

TO: Mark Villwock
FROM: Ron Tangen, Fire Review *RT*
DATE: January 17, 2008
SUBJECT: Greens Estates

Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.512 and we would not have any further requirements. **Road grades shall not exceed 15%.**

Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. You shall provide signage or pavement striping on both sides of the access road if it is less than 28' in width one side of the road if it is 28' wide but less than 36' wide stating "NO PARKING – FIRE LANE" to ensure access availability. If pavement striping is used the curbs shall be painted yellow with black lettering.



Memo

To: Debra Knight - City of Sultan
From: Mark Villwock, P.E.
CC: Craig Sears - Sultan 144, LLC.
Date: January 3, 2008
Re: Greens Estates Requested Explanation

14201 NE 200th Street
Suite 100
Woodinville, WA 98072
Voice (425) 806-1869
Fax (425) 482-2893

The following responds to the City of Sultan Staff's request for additional explanation regarding the proposed road rights-of-way, lot configuration, and the PSE easement elements of Sultan 144's Green's Estates single-family planned unit development (PUD-SF) which were discussed in the Hearing Examiner's September 19, 2007 recommendation.

Summary of PUD-SF Process for Greens Estate:

The Greens Estate project was conceived by the applicant and analyzed by City Staff under Sultan Municipal Code Ch. 16.10 as a PUD-SF. PUD-SF regulations are an alternative to conventional land use regulations that allow a project to be specifically tailored to a particular site by combining use, density and site plan considerations into a single process. SMC 16.10.010.

The PUD-SF zoning review process involved significant interaction between staff and the applicant to create a site-specific development proposal that complied with the City's comprehensive plan and PUD-SF regulations. These regulations are specifically intended to allow flexibility in site design with respect to spacing, heights and setbacks of buildings, densities, critical areas, open space, parking, accessory uses, landscaping, and circulation elements, including "smaller utility and circulation networks." SMC 16.10.010(B). The goal of PUD zoning flexibility is to create superior development that accounts for on-site critical areas and natural features and provides a high level of amenities. SMC 16.10.010(D).

The Green's Estate project addressed on-site critical areas and provided significant amenities including the following:

- Reduction in site density from 106 units to 63 units; This project was originally submitted with 106 units. Exhibit 6 depicts the original submittal overlaid on the current layout. As shown in

Attachment 10

Exhibit 7, attached, the allowed density of this project after the wetland was deeded to the City is 90 units. In working with the City the proposed number of lots was reduced to 63 in order to provide larger lots that would be well received by the citizens of Sultan and City Council.

- Provision of 10.1 acres of open space, which is over 50% more open space than is required by City code (4.32 acres); Due to the critical areas on site and the PSE easement, a large percentage of this site is being retained in open space or dedicated to the City as open space. The total open space dedicated totals 10.1 acres or 46.87% of the site (including open space previously deeded to City). The total required open space associated with this project per SMC 16.10.140.B is 20%, or 4.31 acres (see attached Exhibit 7). Thus, this project has more than twice the amount of required open space.
- Dedication of critical area wetland habitat to the City; 3.49 Acres has been deeded to the City for their use as passive recreation open space and possible wetland mitigation area.
- Construction of 1,110 lineal feet of frontage improvements on Sultan Basin Road and 132nd Street SE; This project will complete a very important section of road improvements along Sultan Basin Road. Since this project fronts on two existing roads, the approximately 1,100 LF of required road frontage is much greater than other projects in the area given the proposed 63 units.
 - Skoglund Estates (48 units) - 470 LF
 - Timber Ridge (85 units) - 975 LF
 - Sky Harbor Estates (62 units) - 350 LF
 - Hammer Property (75 units) - 350 LF
- Construction of a bus turn out and turn-around on Sultan Basin Road; A bus turnout is an important facility to allow for the possibility of future bus access to this area. Also a bus turnaround will be provided within 132nd ST SE to allow flexibility in the routing of buses in this area.
- Creation of road connectivity by providing three connections to existing roads and two connections for future road extensions; and This number of connections far exceeds facilities provided by past projects within the City. To provide the connections requires 700 LF of road within the project that has no lots that front along it. Following is an example of several projects near Greens and the connectivity provided.

- Skoglund Estates (48 units) - One connection to existing roads and two connections for future road extensions.
 - Timber Ridge (85 units)- Two connections to existing roads and one connection for future road extensions.
 - Sky Harbor Estates (62 units) - Two connections to existing roads and two connections for future road extensions.
 - Steen Park (18 units) - One connection to existing roads
 - Denali Ridge (15 units) - One connection to existing roads and one connection for future road extensions.
- Creation of pedestrian trail connectivity that will help complete a pedestrian trail to SR-2 from the intersection Sultan Basin Road and 132nd Street SE. This project provides a very important link to the existing trail system that will connect SR 2 through the proposed Hammer Project to the existing Sky Harbor system and the Skoglund Estates system through the proposed Greens system to the intersection of 132nd St SE and Sultan Basin Road.

The project site plan was the product of extensive negotiation with City Staff. In order to cluster the development in a manner that allowed provision of the above-listed amenities, Sultan 144 requested, and both the City Planning Director and City Engineer approved, two deviations from the City's standard regulations, which are allowed under SMC 16.10.010's flexible design standards. These deviations are:

1. Reduced Rights-of-way - The City of Sultan standard road section calls for a 60 foot right-of-way, with two 12-foot travel lanes, two 8-foot parking lanes, curb, gutter, 5 foot sidewalks on each side, and street trees planted every 20 lineal feet within a 3-foot planter strip. SMC 16.10.120(B) authorizes the City Planning Director and City Engineer to modify these street standards through the PUD process.

The Green's Estate plan calls for keeping the six internal roads (Roads A-F) the same as the City standard with two 12-foot travel lanes, two 8-foot parking lanes¹, 3-foot planter strip and 5-foot sidewalks but reducing the overall right-of-way by 10 feet down to 50 feet. All of the improvements cannot be accommodated in the reduced right-of-way so Sultan 144 has proposed placing a portion of the sidewalks in a public easement. One of the primary reasons for the requested ROW reduction is to preserve open-space along the PSE easement. In addition, the ROW reduction was negotiated with Staff in lieu of permitting a narrower 32-foot road pavement section that had been proposed by Sultan 144. The approved plan retains the City's standard 40-foot road section.

¹ Roads D and E are planned with one 8-foot parking lane.

2. Panhandle lots - The City Code requires that lot frontage be at least 20-feet in width where they abut the public road. 12 of the 63 lots in Greens Estates are “flag” or “panhandle lots” that have drives that extend beyond the primary building area. The proposed driveways for these lots are contained within lot lines that are 20 feet wide at the road frontage but then taper to 15 feet as they move back toward the garage. This configuration allows for sufficient space at the driveway/road intersection to accommodate utilities and refuse cans while also increasing the usable property for the lots on either side of the driveway. The increased lot size was also consistent with City’s expressed preference for 4,500 square-foot or larger lots.

The final item is in regards to the PSE easement. This item is not a deviation but rather a request for additional information to ensure that the location and use of the easement as part of this development is acceptable to PSE.

3. PSE Easement - The Greens Estate property includes a large Puget Sound Energy transmission line easement. At the open-record hearing, the Hearing Examiner requested additional information to ensure that the proposed development layout took proper account of the utility easement. Sultan 144 has received and executed a Consent for use of the PSE easement outlining the guidelines for the development of the easement as well as demonstrating agreement with the location of the easement.

Discussion

1. Reduced Right of Way

Hearing Examiner Conclusion number 8 on page 19.

8. *Right-of-way width reduction in a PUD is available 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, the right-of-way width reduction is not coupled with reduced street sections or off-street parking areas, but rather is offset by a sidewalk easement on each side of the street. What is actually happening, is that Sultan 144 is proposing to construct standard width streets and sidewalks within rights-of-way which are too narrow to contain them. The “left over” parts of the sidewalk are then placed within easements encumbering the front five feet of each frontage lot. The end result is an increased lot yield: With the typical lot in Greens Estates being 50-foot wide, the sidewalk easement design saves the Applicant about 250-square feet for every lot which fronts directly on a street. Those savings equal more than two lots.*

This concept does not seem to be what SMC 16.10.120(B)(4)(b) is all about. The Hearing 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 in many future applications because of its ability to increase lot yield with no other apparent public benefit or private cost.

Discussion

Contrary to the Examiner's assumption, the purpose of the requested right-of-way easement was not to increase lot yield. As discussed previously, Sultan 144 reduced the number of proposed lots from 109 to 63 and significantly increased the size of the individual lots. The reduced ROW arose out of negotiations with Staff on pavement width and to preserve open space.

Exhibit 1 provides a comparison of the proposed road section versus the standard road section. The road width, sidewalks and planter strips are all exactly the same as the City standard in both scenarios. The only deviation is the reduced width of the ROW, which requires that the sidewalks are located within easements. Once constructed, the ownership and maintenance of the roads will be the same as that of any other public road within the City.

The Examiner's Recommendation questioned whether approval of the reduced ROW would establish an undesirable precedent for future projects. The Examiner also questioned whether there would be sufficient driveway length between the garage and the street to ensure that parked cars would not extend over the sidewalk.

SMC 16.10.010 calls for a holistic, project-specific review to determine the conditions that will apply to a particular project. Thus, the City retains discretion to determine whether "smaller . . . circulation networks" are appropriate in a particular instance. 16.10.010 (B). Moreover, the City Council previously approved similar reduced rights-of-way for the Skoglund Estates project, so the current request is not setting new precedent.

To ensure that there is sufficient space between the garages and the sidewalks, the applicant is willing to agree to a condition that would condition the preliminary plat approval by requiring that the project CC&Rs include a provision that garages would be setback at least 18 feet from the back edge of the sidewalks.

On June 29, 2007 the City Council approved the Skoglund Estates preliminary plat as resolution number 06-09, which contained a similar request for reduced rights-of-way. Exhibit 2 depicts the areas within the approved Skoglund plat that contain sidewalks within easements, and Exhibit 4 is the

excerpt from the Skoglund Staff Report that discusses the reduced width rights-of-way².

For the Skoglund project, Sultan 144 requested that the City Engineer and City Planning Director allow a reduced road section of 32-foot with the standard sidewalks and planter strips. This road section would allow parking on one side and two 12' travel lanes. As shown on Exhibit 5, many jurisdictions allow 32-foot paved road sections. City staff was reluctant to approve the reduced pavement width and, as an alternative, the parties negotiated the ROW reduction.

Thus, the reduced ROW concept has been previously approved by both City Staff and the Council, and, in fact, the Greens project connects to a 50-foot ROW within the Skoglund project that is the exact road section proposed on the Greens Project.

In the September 11, 2007 Staff report on recommending approval of the Green's Estate preliminary plat, the City Engineer and City Planning Director supported the request for reduced width rights-of-way:

b. *Street Standards (Section V Traffic and Circulation Page 8)*
Internal Public Roads

The Sultan Design Standards and Specifications require, for public local access streets, a 60 foot right-of-way, with two 12 foot travel lanes, parking lanes on each side, curb, gutter, 5 foot sidewalks on each side, and street trees planted every 20 lineal feet.

As submitted, Roads A-F as proposed will provide 50 foot right-of-ways, two 12 foot travel lanes, 5 foot sidewalks on both sides, and two 8 foot parking lanes. The exception to this is Road D and F, which will have parking lanes on only one side of the road. Final plans will show the street trees meeting the 20 lineal feet requirement, or as accepted by the Community Development Director and City Engineer.

Per SMC 16.10.120(B), the City Planner and City Engineer may allow modifications to the street standards through the PUD process. As submitted, this project is consistent with other PUD's within the City.

SMC 16.10.120(B)(4)(a) and (b) allows for variations to the road standards for PUD projects as follows:

SMC 16.10.120(B)(4)(a) and (b)

² For example, in his January 25, 2005 preliminary plan review, the City Engineer noted that the sidewalk/easement proposal met current planning see Exhibit 11.

- a. *Standards of design and construction for roadways within residential PUDs may be modified as is deemed appropriate by the planning director and city engineer with the concurrence of the city council, following a recommendation by the Hearing Examiner.*
- b. **Right-of-way width and street roadway widths may also be reduced, especially where it is found that the plan for PUD provides for the separation of vehicular and pedestrian circulation patterns and provides for adequate off-street parking facilities.** (Emphasis added).

Thus, the PUD permitting process specifically allows variations to the standard road section including the rights-of-way reduction that was approved for this application.

The following are suggested revised conditions of approval that to address the rights-of-way and easement issues.

Condition 5 (d) (as proposed by the Hearing Examiner)

Garages whose vehicular door(s) face a street with reduced right-of-way and a sidewalk easement must maintain an ~~18~~²⁵-foot setback between the back edge of the sidewalk and the near face of the garage.

Condition 12 (Proposed Revised Condition)

Roads A,B,C and E will provide the standard City of Sultan Road Section within a reduced right-of-way (50 feet instead of 60 feet) and will place the required sidewalks within easement on private property. Roads D and F, as shown on the preliminary plans, are permitted to deviate from the design standards. Roads D and F have a reduced right-of-way width (50 feet instead of 60 feet) and have eliminated one (1) parking lane. Sidewalks will be within the right-of-way for Roads D and F.

2. Panhandle lots

Hearing Examiner Conclusion number 11 on page 20 provides as follows:

- 11. *The evidence shows that appropriate provisions have been made for most all the items listed in SMC 16.28.330(A)(2), including transit stops. The Examiner nevertheless has doubts about the wisdom of the flared panhandles and the reduced width rights-of-way.*

The SMC requires that every lot abut a street by not less than 20 feet. [SMC 16.150.010(3)] Sultan 144 has met that requirement for its panhandle lots by flaring a 15 foot wide panhandle out to 20 feet where it touches the right-of-way. (Exhibit 4Y) In other words, the panhandle is 20 feet wide only at the precise point of intersection with the street; the side lot lines abutting the panhandle have a "jog" or "dog leg" in them. This is a

new concept to this Examiner. The concept is another way to increase yield: A typical 20 foot wide panhandle is reduced to 15 feet for most of its length. Given that most of the panhandles are about 75 feet long, the design "saves" about 350 feet for every panhandle. The 30+(Should Read 12) panhandles in the plat "save" the equivalent of about two lots.

A further question is whether the "jog" or "dog leg" in the lot lines will serve the public use and interest. Most people, rightly or wrongly, expect their property lines to be straight line segments. Since the driveways in these panhandles will likely not be flared to match the property lines, abutting owners may well believe that their property lines run straight to the street. Property line disputes could result and/or the panhandles could end up to be effectively only 15 feet wide all the way to the street. 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 in many future applications because of its ability to increase lot yield with no other apparent public benefit or private cost.

Discussion

Again, the Examiner mistakenly assumes that the panhandle concept is to increase lot yield. The panhandle lots that are proposed for 12 of the 63 lots in the Greens project, are the exact layout concept used on the Skoglund Estates project previously approved by Staff and the City Council. The panhandle lots meet the requirements of the Sultan Municipal Code section SMC 16.150.010(3) since they provide the 20 feet of frontage where the lot abuts the public street.

SMC 16.150.010 (3) provides:

3. "Access" means a means of vehicular ingress and egress to a lot or parcel. For the purposes of this code a lot shall abut by no less than 20 feet upon and have direct access to: (A) an opened, constructed and maintained public Road; or (B) a private road in plat or short plat approved by the city of Sultan; or (C) an exclusive, unshared, unobstructed permanent easement at least 20 feet wide.

Panhandle lots with tapered driveways were proposed and approved as part of the Skoglund Estates Project for lots 13, 17, 24, 36, and 43, as shown on the attached Exhibit 2. This concept was supported by Staff for the Greens project in the September 11, 2007 staff report, which provides: .

c. Lot Size and Coverage (Section II Land Use Zoning Page 5)

The Applicant proposes lot sizes that range from 4,656 sf to 10,415 sf, with an average lot size of 5,770 sf. The maximum lot coverage under SMC 16.12.010 is 30% for PUD's. At the time of building permit submittal, the Applicant will be required to show compliance with this section of the

code. The proposed minimum lot widths range from 40 feet to 78 feet; panhandle lots have a lot width of 20 feet at the lot line. The above lot sizes, widths, and coverages comply with SMC 16.12.010 and SMC 16.10.120.

In order to give an idea of how the panhandle lots will look at final build out, the applicant has provided Exhibit 8 showing representative panhandle lots that flare from 15' to the 20' in width. The taper will not be an issue with property owners. The location of the flare is close to the right-of-way where fences are generally not located and is typically utilized as a landscape area. As shown in Exhibit 8, the 15-foot panhandle access allows for the City minimum required 10-foot driveway with landscaping for screening on either side.

City of Sultan Design Standards and Specification Amended February 24, 2005
Section 4.04 Driveways item 6.

- a. *Residential, Single family - Minimum width 10 feet. Maximum width 20 feet.*

This panhandle lot design was developed with the support of the City Staff in order to maintain the density of the project with the site constraints. As stated previously, the allowed density for this site is 90 units. The applicant is only proposing 63 units to accommodate critical areas and other site constraints and requirements imposed by the City. This project was vested prior to the lot size requirements that were implemented for PUD projects. Thus smaller lots could be proposed to maintain or even increase density, but Staff requested that larger lot sizes which would make the development more appealing and meet the concerns of council.

3. PSE easement

Hearing Examiner Conclusion number 31.1 on page 28 requested additional information on the development's accommodation of the PSE easement.

1. *The Council should not under any circumstances grant approval to Greens Estates unless it has received written approval from PSE of the easement alignment through the property. The City would be creating an enormous mess were it to approve a plat layout without knowing for sure where an existing high voltage electrical transmission easement lies. Future lot owners could find themselves in the midst of protracted, unpleasant, expensive litigation if PSE had to fight to preserve its easement. Since Sultan 144 believes that it can receive written acceptance of the present design within 30 days of the Examiner's hearing, and since the proposal will most likely not get on the Council's agenda before that period ends, Sultan 144 should be able to submit PSE approval before the*

*Council's consideration. The Examiner will recommend that the Council not grant approval absent such a document.*³

Discussion

Sultan 144 has worked closely with PSE regarding the location of the easement, as well as the allowed uses within the unused PSE easement. The easement had not been located at the time of the original submittal of this project. Since that time, the easement area has been accurately located and depicted on the plans.

The result of our coordination with PSE was a Consent for Use document that was created for the Greens Estates project dated December 12, 2007 and executed by Sultan 144, LLC on December 13, 2007 (attached as Exhibit 9). This document outlines the conditions of the use of the PSE easement. It also confirms that the easement as shown on the Greens Preliminary PUD and Plat is, in fact, in the correct location. The letter references a survey "PSE Right-of-Way Exhibit for Sultan 144, LLC" produced by Concept Engineering that is attached as Exhibit 10.

In order to comply with the Consent to Use, a few minor changes were made to the preliminary Plat/PUD plans and submitted to PSE (attached as Exhibit 11). These changes are as follows:

1. Removed street trees from 326th Ct SE and 325th Ct SE that were within the PSE easement.
2. Replaced street trees along 325th St SE that were within the PSE easement. These are being replaced with a tree species that will have a maximum mature height of 15'
3. Adjusted water, sewer and storm along 325th St SE so they are not within the PSE easement.
4. Added fencing note to LA-01 as requested by PSE.
5. Added driveway ramps and bollards to active open space tracts 983, 989, 993 and 999 for PSE to access their easement.
6. Revised PSE easement note from "PUGET SOUND ENERGY EASEMENT A.F. NO. 51178 UNPLOTTABLE AND UNDEFINED" to read "100' WIDE PSP&L EASEMENT, REC. NO. 511778".
7. Added notes to PP-01 that pertain to notes that are requested to be on the Final Plat by PSE.

The PSE-requested changes do not change the location of the tract or lot lines or required the modification of any proposed roads. Once the Consent for

³ *Council consideration of the Examiner's Recommendation is at a closed record hearing. Additional evidence is normally not allowed at a closed record hearing. But where the Recommendation calls for submittal of a certain document prior to approval, submittal of the required document should be a permissible exception to the general rule.*

Use is executed by PSE it will be recorded with the County Auditor. Since these conditions are recorded as an encumbrance against the property, it is not necessary to incorporate the conditions requested by PSE into the conditions required by the City. The applicant recommends the following condition of approval to address the easement issue.

Condition 33

The project shall comply with the Consent for Use of Puget Sound Energy, Inc. Transmission Line Easement executed by Sultan 144, LLC on December 13, 2007, and the Consent shall be recorded prior to approval of the final plat.

List of Exhibits

1. Greens Estates Road Sections
2. Skoglund Estates PUD Layout
3. Greens Estates PUD Layout
4. Skoglund Estates Staff Report
5. Residential Road Section Comparison
6. Greens Estates Original and Current Site Plan
7. Greens Estates Density and Open Space Calculations
8. Greens Estates panhandle Lot Exhibit
9. PSE letter dated December 12, 2007 and Consent For Use
10. PSE Right-of-Way Exhibit For Sultan 144, LLC by Concept Engineering, Inc.
11. Plat of Skoglund Estates Preliminary Civil Plan Review By Jon Stack, P.E City Engineer dated January 20, 2005
12. Revised Preliminary Plans for Greens Estates dated 12/19/2007