

# SULTAN CITY COUNCIL

## AGENDA ITEM COVER SHEET

---

**ITEM NUMBER**            **A-1**  
Caleb Court Preliminary Subdivision and Planned Unit Development

**DATE:**                    January 24, 2008

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

**CONTACT PERSON:**    Reid Shockey, Shockey Brent, 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 November 13, 2007 (Exhibit 1) for the Caleb Court Preliminary Planned Unit Development Subdivision and the Appeal from Freed 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 three (3) issues of noncompliance. 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 following issues of noncompliance were raised by the Hearing Examiner, and form the basis of his recommendation of denial, as well as the Applicant's appeal issues.

1. The Caleb Court Preliminary PUD and Subdivision proposes street right-of-way width reductions and alternative street design, which do not serve the public interest. (SUBJECT OF APPEAL)
2. The Caleb Court Preliminary PUD and Subdivision proposes a cul-de-sac length that is over the maximum allowed length, which does not serve the public interest. (SUBJECT OF APPEAL)
3. The Caleb Court Preliminary PUD and Subdivision does not meet the requirements for police concurrency under the City's concurrency management system in SMC 16.108. (SUBJECT OF APPEAL)

## **ACTIONS FOR COUNCIL TO TAKE:**

1. Conduct the Closed Record Hearing on the Caleb Court Preliminary PUD and Subdivision.
2. Conduct the Public Appeal Hearing on the Appeal of the Hearing Examiner's Recommendation by Freed, Inc. that: the street modifications for the Caleb Court project do not serve the public interest by 1) reducing street right-of-way widths and proposing alternative street design, and 2) proposing a cul-de-sac that is longer than the maximum length allowed; and does not meet the police concurrency requirements under SMC 16.108.
3. Discuss the issues outlined in the Issues section and detailed in the Discussion section of this staff report.
4. At the conclusion of the Closed Record and Public Appeal Hearing, consider under Action Item A-1 one of the following options. The Resolutions discussed have been prepared by staff to guide discussions:
  - a. Resolution Number 08-05, 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. 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 three (3) main issues regarding reduced street right-of-way widths and alternative street design, the length of the cul-de-sac, and the failure to meet police concurrency requirements.

The Applicant filed an appeal with the City on November 26, 2007 appealing the Hearing Examiner's Recommendation to deny the PUD based these three issues.

In their appeal filing (Exhibit 3), the Applicant requests that the City Council find that:

1. The Caleb Court proposed right-of-way reductions are appropriate in that they are consistent with SMC 16.10.120(B)(4)(b);
2. The proposed cul-de-sac length meets the public interest in that it provides safety and privacy for the residents of Salmon Run North and the proposed

Caleb Court development and alternative intersections would be unsafe or inappropriate;

3. That both the Police Services Agreements proposed by the Applicant meet the Concurrency requirements of SMC 16.108 and are consistent with previous agreements submitted and approved by the City.

### **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 Resolution Number 08-05 prepared by the City Attorney. A new Resolution may also be requested of staff, to be brought back before council at the next Council Meeting.

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 October 9, 2007 for the Caleb Court Preliminary Planned Unit Development (PUD) and Subdivision located at 803 High Avenue west of the present terminus of Salmon Run North. The Hearing Examiner's Report and Recommendation, dated November 13, 2007, DENIED the Planned Unit Development and RETURNED the Preliminary Subdivision for Modification. The Hearing Examiner's Recommendation, on page 21 of 24, 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 21).

The Applicant filed an appeal with the City on November 26, 2007 appealing the Hearing Examiner's Recommendation to deny the Caleb Court project based on the project not serving the public interest by 1) reducing street right-of-way widths and proposing alternative street design, and 2) proposing a cul-de-sac that is longer than the maximum length allowed; and does not meet the police concurrency requirements under SMC 16.108. 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 January 10, 2008.

On January 10, 2008 the City Council conducted the Public Meeting on the Appeal and thereafter by Motion, set January 24, 2008 to conduct the Closed Record Hearing and Public Hearing on the Appeal for the Caleb Court Planned Unit Development.

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 24, 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.

### Recommendation of Denial:

The Hearing Examiner recommends that the application for a Planned Unit Development be denied on three (3) bases:

1. **Right-of-way Reduction and Alternative Street Design:** The Caleb Court Preliminary PUD and Subdivision proposes street right-of-way width reductions and alternative street design, which do not serve the public interest.

The Caleb Court Preliminary PUD and Subdivision proposes a reduced right-of-way width of thirty-five (35) feet. The street section would include two (2) paved travel lanes, no parking lanes, curbs and gutters, concrete sidewalks on both sides, and planter strips on both sides between the sidewalk and the front yards of the abutting properties. The planter strips and four (4) feet of the sidewalk would be placed in easements on private property.

The standard street section, per the City's Design Standards and Specifications, calls for a sixty (60) foot right-of-way, with two (2) paved travel lanes, parking lanes on both sides, curbs and gutters, planter strips on the street edge, and concrete sidewalks on both sides.

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 pedestrians. The proposed design would position moving vehicles and pedestrians directly adjacent to one another, as the sidewalk and the roadway would not be separated by parked vehicles and/or planter strips. This requirement is not met, and this modification may provide adequate pedestrian safety.

For this project, the right-of-way is reduced by placing the required sidewalks and planting strips in easements 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 allowing this would mean much smaller distances between the homes and the sidewalk (i.e. small yards). This project would provide an eleven (11) foot setback between the back of the sidewalk and the front of the homes.

**Staff Response:**

The street standard requirements for this project are clearly not met. The proposed right-of-way reductions are not permitted under the PUD Code in SMC 16.10.120(B)(4)(b), which allows right-of-way reductions only when there is a separation of moving vehicles and pedestrian traffic, and when there is enough off-street parking.

In this case, there is likely adequate off-street parking – each property will provide at least four (4) parking spaces, which is double the maximum required for single-family residences.

The right-of-way reduction does not meet the requirement for separation of vehicular and pedestrian traffic. In a standard street section, moving vehicles would be

separated from pedestrians on sidewalks by both a line of parked vehicles and a planter strip.

For this project, the on-street parking is removed, and the planter strip is placed behind the sidewalk – between the sidewalk and the neighboring residence. The effect of this is that the planter strip becomes front yard landscaping and does not serve its primary purpose of creating an aesthetic on the street, and providing a small landscaped buffer for the pedestrian.

If the City ever decided to improve the street in the future, there would be insufficient right-of-way to build a full street section within the thirty-five (35) feet of right-of-way proposed. This would require the City to buy property from the abutting private owners. This could be costly for the City in the future.

2. **Cul-de-Sac Length:** The Caleb Court Preliminary PUD and Subdivision proposes a cul-de-sac length that is over the maximum allowed length, which does not serve the public interest.

The Caleb Court PUD and Subdivision proposes a cul-de-sac length of 760 feet long measured from High Street, with a turnaround located at the end of the Sultan Run North, which leads into the proposed project.

The City's Design Standards and Specifications allow a cul-de-sac to be no longer than 300 feet. The proposed cul-de-sac exceeds this standard by 460 feet. Coupled with the proposed right-of-way reductions with Caleb Court, emergency vehicle access would be significantly hindered within this area.

The Hearing Examiner recommends that the street be re-designed to stub out at the south property line for future extension south to intersect with High Avenue, which would provide an intersection spacing of 250 feet from the intersection of High Avenue/Salmon Run North. There are three (3) parcels south of Caleb Court that are likely to be redeveloped given the current zoning and surrounding development.

#### **Staff Response:**

There are two (2) modifications to the City's Design Standards and Specifications proposed by this project. The first is the reduced right-of-way.

The Hearing Examiner's Recommendation makes it clear the impact that employing both modifications would have on the emergency vehicle access.

The Hearing Examiner recommends that instead of a cul-de-sac, the street be stubbed at the south property line so that it can create a through-street back to High Avenue. The Council may want to support the cul-de-sac, as long as the reduced right-of-way is not approved. The turnaround that will be constructed at the entrance to Caleb Court

and the provision of four (4) off-street parking spaces per lot justifies the length of the cul-de-sac.

The stub at the south property line is an option for the Applicant to pursue. The City's Traffic Engineer has not provided an opinion on whether the connection back to High Avenue would serve the City's interests. Before requiring a stub, the Traffic Engineer should weigh in with an opinion.

While the cul-de-sac length that other jurisdictions allow is not relevant to this case, Council may want to consider an amendment to the City's Design Standards that increases the maximum length of a cul-de-sac. Staff can initiate a revision to the Design Standards to make them more consistent with good development.

3. **Police Concurrency:** The Caleb Court Preliminary PUD and Subdivision does not meet the requirements for police concurrency under the City's concurrency management system in SMC 16.108.

The Caleb Court Preliminary PUD and Subdivision does not meet the requirements for police concurrency under SMC 16.108. The Hearing Examiner recommends a condition (Condition #24) 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 Applicant has proposed two (2) development agreements that would pay a proportional share of police services to the City. These agreements should be a condition of approval, which under the Hearing Examiner's Recommendation, they are not. Instead, he's replaced that condition with a separate condition, which the Council has seen before with all PUD's since AJ's Place in 2006.

The condition recommended by the Hearing Examiner, and approved by Council in one (1) previous PUD, for Hammer PUD, requires that the Police Services LOS requirements in existence at the time of final building permit inspection would be met before approval of occupancy could be granted. Greens Estates, also on the agenda for January 24, 2008, will also have this condition regarding Police LOS.

Council should recognize that by approving Hammer PUD, and considering Greens Estates PUD and Twin Rivers Ranch Estates Subdivision tonight with the same condition, a policy is being set regarding Police LOS requirements. In order to be consistent, this project should be subject to the same condition as these other PUD's, and future PUD's will be required to meet this requirement.

Although it would not impact this project, Council should consider revising or repealing the Police LOS Standard, as it is not required by state law for compliance with the Growth Management Act. Staff could present a revision or repeal at a future Council Meeting. This would remove the requirement from the Code under SMC 16.108, but would not revise the LOS standard in the City's Comprehensive Plan, which is being

completed under a separate process. This would maintain the LOS as a goal in the Comprehensive Plan for the City to achieve, but remove the requirement for applicants to meet them with each new development.

**RECOMMENDED ACTION:**

1. Conduct the Closed Record and Public Appeal Hearing on the Caleb Court Planned Unit Development and Appeal of the Hearing Examiner's decision that the Caleb Court project does not serve the public interest by 1) reducing street right-of-way widths and proposing alternative street design, and 2) proposing a cul-de-sac that is longer than the maximum length allowed; and does not meet the police concurrency requirements under SMC 16.108.
2. Discuss the issues regarding the street right-of-way width, cul-de-sac length, and police concurrency.
3. DENY the PUD without prejudice based on Reduced Right-of-Way and Alternative Street Design, and RETURN the Preliminary Subdivision to the Applicant for Modification.
4. Direct staff to draft a Resolution that will provide findings of fact and conclusions of law supporting this decision.

---

**ATTACHMENTS:**

1. Hearing Examiner's Recommendation, dated November 13, 2007
2. City Staff Report, dated October 15, 2007
3. Appeal Notice from Freed LLC, dated November 26, 2007
4. SMC Code Section 2.26.150, Council Consideration
5. SMC Code Section 16.10.120, Residential PUD density increases and development standards
6. SMC Code Section 16.108, Concurrency Requirements
7. Resolution 08-05
8. Caleb Court Preliminary Plat PUD Maps

BEFORE the HEARING EXAMINER of the  
CITY of SULTAN

RECOMMENDATION

FILE NUMBER: FPPUD06-001

APPLICANT: Freed, LLC <sup>1</sup>

TYPE OF CASE: Preliminary Planned Unit Development subdivision (*Caleb Court*), including requests to reduce right-of-way and pavement width and to extend cul-de-sac length

STAFF RECOMMENDATION: Approve subject to conditions

SUMMARY OF RECOMMENDATION: DENY Planned Unit Development without prejudice; RETURN preliminary subdivision for modification

DATE OF RECOMMENDATION: November 13, 2007

INTRODUCTION

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

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

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

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

---

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

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

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

Attachment 2

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 2 of 30

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

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

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

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

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

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

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 3 of 30

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

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

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

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

#### ISSUES <sup>4</sup>

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

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

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

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

---

<sup>4</sup> Any statement within this section deemed to be either a Finding of Fact or a Conclusion is hereby adopted as such.

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

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

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

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

### FINDINGS OF FACT

1. The hearing record contains two application "binders," each containing 13 identical subject matter tabs (Exhibits 1 and 23); the record also contains two versions of a Police Services Agreement (Exhibits 8 and 20), three versions of proposed development plans (Exhibits 2, 15, and 23.6a), three versions of the proposed landscape plan (Exhibits 1.6b, 16, and 23.6b), and three versions of the DCD Staff Report (Exhibits 7, 17, and 19). Except where necessary to reference an historical document not contained in the later submittal, this Recommendation considers Exhibit 23 to be the application; except where necessary for comparison purposes, this Recommendation evaluates only the latest submittals: Exhibits 20, 23.6a, 23.6b, and 19, respectively.
2. The *Caleb Court* site consists of two abutting, rectangular parcels, each containing a single family residence. The parcels together create a site which is approximately 300 feet wide (east-west) by 400 feet deep (north-south). (Exhibit 23.6a {Sheet C2.0}) The site lies about 250 feet north of High Avenue and is separated from High Avenue by three parcels, each of which has frontage on High Avenue. (Exhibit 23.8 {unnumbered p. 5}) The two parcels share a 30 foot wide ingress, egress, and utilities easement across Tax Parcel 3-153 (the Bughi property) south to High Avenue. (Exhibits 10,

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

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 5 of 30

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

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

3. Surrounding uses are varied:

- A. Sultan High School lies to the north. The school athletic fields are directly across the north property line. The site is separated from the school property by a chain link fence. (Exhibits 19 and 23.6a {Sheet C2.0})
- B. *Nelson's First Addition to Sultan (Nelson's Addition)*, a nine lot single family residential subdivision served by Salmon Run North, borders the entire east side of the *Caleb Court* property. Eight lots in *Nelson's Addition* are on the east side of Salmon Run North; only *Nelson's Addition* Lot 1 (located in the northwest corner of the Salmon Run North/High Avenue intersection) is on the west side of Salmon Run North. The remainder of the west side of Salmon Run North in *Nelson's Addition* consists of Tract 999, an open space/drainage tract. The lots in *Nelson's Addition* are approximately twice the area of the proposed *Caleb Court* lots. (Exhibits 23.6a {Sheets C1.0 and C2.0} and 23.8 {Unnumbered p. 5})

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

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

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 6 of 30

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

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

4. The *Caleb Court* site is designated Moderate Density Residential on the adopted Comprehensive Plan (Plan). (Exhibit 19, p. 5) The Council has zoned the site Moderate Density (MD) to implement the Plan. (Exhibit 19, p. 1) The MD zone allows single family residences at a maximum density of 6.0 dwelling units per acre with standard minimum lot area, width, and depth of 7,200 square feet (SF), 60 feet, and 80 feet, respectively. Standard minimum front, side, and rear setbacks in the MD zone are 20 feet, minimum 5 feet total of 15 feet, and 20 feet, respectively. PUDs in the MD zone are allowed-reduced standards: minimum lot area, width, and depth are 4,000 SF (4,500 SF average), 40 feet, and 100 feet, respectively; minimum front, side, and rear setbacks are 20 feet, 5 feet, and 20 feet, respectively. [SMC 16.12.020(C), Table of Dimensional and Density Requirements] Further lot area and front, side, and rear setback reductions are permissible if the PUD application meets certain requirements. [SMC 16.10.120(B)(1) and (2)]
5. Freed proposes to subdivide the property into 16 lots for single family residential houses using the PUD overlay provisions of the SMC. The proposed density is 5.89 dwelling units (lots) per acre. The smallest proposed lot is 4,000 SF; the average lot size is 4,756 SF. All the lots will be served by a 330 foot extension of Salmon Run North, ending as a permanent cul-de-sac approximately 60 feet north of the south property line. 24,833 SF (21% of the site) of open space is proposed to be preserved in tracts located in the northwest and southwest corners of the site. The easterly of the two existing residences is proposed to be preserved on Lot 15; the other residence may be moved onto a proposed lot, removed from the site, or demolished. (Exhibit 23.6a and testimony)
- Proposed houses reflect a modern Craftsman design, are two stories, and contain approximately 2,000 to 2,150 SF. (Exhibit 23.13)
6. Freed's proposal is dependent upon a number of deviations from adopted standards under SMC 16.10.120(B):
- A. Street right-of-way width and section. Adopted standards call for a 60 foot wide right-of-way containing a paved, two-way street with parking lanes, curbs and gutters, planter strips on the street edge, and concrete sidewalks on both sides. [Design Standards and Specifications

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 7 of 30

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

- B. Cul-de-sac length. Section 1.09 of the Design Standards provides that no cul-de-sac may exceed 300 feet in length. Freed's proposal would result in creation of a 760 foot long cul-de-sac (measured from High Avenue to the radius point of the cul-de-sac).<sup>6</sup> Freed has offered to create a "bubble" at the end of present Salmon Run North to serve as a mid-point turnaround area. (Exhibit 23.6a {Sheet C1.0})
- C. Front setbacks. Freed proposes an 18 foot setback from the back edge of the sidewalk (equivalent to a 22 foot setback from the front property line) for garages and a 15 foot setback from the property line (equivalent to 11 feet from the back edge of the sidewalk) for other portions of buildings. (Exhibit 23.6a {Sheets C1.0 and C3.1})
- D. Rear setbacks. Freed proposes to reduce rear setbacks to 10 feet. To offset that reduction, Freed proposes to enclose the entire development with a six foot tall, solid board fence. (Exhibits 23.6a {Sheet C1.0} and 23.6b)

- 7. *Caleb Court* meets the locational requirements of SMC 16.10.110(B). (Exhibit 19, p. 5)
- 8. *Caleb Court* meets minimum permissible lot area, width, and depth requirements. The proposed density is just under the maximum permissible. (Exhibit 19, pp. 5 – 7) However, since the front setback is legally measured from the property line/edge of the street right-of-way, the effective front setback will be less than the code-allowed 15 feet.
- 9. The *Caleb Court* house designs include built-in two-car garages. (Exhibit 23.13) That provision meets the SMC requirement for two on-site parking stalls. The proposed 18 foot setback from the back edge of the sidewalks would provide two additional parking spaces on each lot. The street design is such that on-street parking is impossible without reducing the travel lanes to less than two.

---

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

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 8 of 30

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

10. The proposal meets SMC open space and recreation requirements. (Exhibit 19, pp. 10 and 11)
11. —Sultan's State Environmental Policy Act (SEPA) Responsible Official issued a Mitigated Determination of Nonsignificance (MDNS) on August 10, 2007. (Exhibit 4) The MDNS was not appealed.

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

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

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

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

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

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

<sup>7</sup>

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

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 9 of 30

The 2004 Comprehensive Plan LOS is 2.6 Uniformed Officers per 1,000 residents. The City has six (6) uniformed officers. The current deficit is 5.78 Uniformed Officers, which is based on the City of Sultan's Office of Financial Management (OFM) July 1, 2007 population of 4,530. Police Services are funded through the City's General Fund and other sources. Increased tax revenue associated with the development will work towards offsetting incremental increases of police services as needed to accommodate the City's population. Police service improvements scheduled to maintain the City's adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan. In order to maintain an acceptable level of service for police the applicant is providing a Development Agreement to guarantee the LOS for police services.

The City Council, in the plats/developments of Skoglund Estates, Steen Park, Cascade Breeze, Vodnick Lane, A J's Place, Twin Rivers Ranch Estates, and George Town Home Development, has determined that if the applicant for a subdivision/development enters into a Developer Agreement to establish concurrency, the application can be deemed Concurrent as it relates to Police Services. The Applicant has provided such an Agreement, committing to pay \$18,395.00 to the City of Sultan to mitigate their impacts on the Police Level of Service.

The City Council in Resolution No. 06-12 requested the Hearing Examiner to consider their previous actions and interpretations with regards to Police Level of Service (LOS). Previous actions have involved: Steen Park, Cascade Breeze, Skoglund Estates, A J's Place, Vodnick Lane, Twin Rivers Ranch Estates, and George Town Home developments.

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

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

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 10 of 30

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

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

15. DCD recommends approval of *Caleb Court* subject to 24 conditions. (Exhibit 19, pp. 16 – 18) DCD indicated that the typical house plans (Exhibit 23.13) should also be included in the list of approved plans in Recommended Condition 1. DCD also asked that Recommended Condition 24 (which had been added by DCD subsequent to the October 9<sup>th</sup> hearing) be revised: “The proposed development applicant shall be subject to file and record the voluntary Police Level of Service standards in effect at the time of final plat approval Agreement.” (Testimony)
16. *Caleb Court* is opposed by many residents of *Nelson's Addition*. They object to Salmon Run North being extended only as a cul-de-sac, rather than as a future through street: They believe Salmon Run North was intended to be a through street and should be preserved as such. They object to the reduced right-of-way width and street section: They believe it will force residents and guests of residents in *Caleb Court* to park on their portion of the street as it will be the only part with effective on-street parking. They object to the reduced lot sizes and setbacks: They believe they will be significantly out of character with the lots and residences in *Nelson's Addition*. (Exhibits 11, 28, and 29 and testimony)  
  
Bughi, who submitted her comment letter at a time when the design had no lots touching the south property line), wants all construction access to use Salmon Run North rather than the easement across her property, wants the easement vacated, and wants a six foot high fence along her north property line to prevent trespass. (Exhibit 10)
17. Any Conclusion deemed to be a Finding of Fact is hereby adopted as such.

PRINCIPLES OF LAW <sup>8</sup>

Authority

---

<sup>8</sup> Any statement within this section deemed to be either a Finding of Fact or a Conclusion is hereby adopted as such.

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 11 of 30

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

Review Criteria

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

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

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

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

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

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

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 12 of 30

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

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

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

[RCW 36.70B.030]

Vested Rights

Subdivision and short subdivision applications are governed by a statutory vesting rule: such applications "shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application ... has been submitted ...."

[RCW 58.17.033; see also SMC 16.28.480]

Standard of Review

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

Scope of Consideration

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

**CONCLUSIONS**

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 13 of 30

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

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

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

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

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

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

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

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 14 of 30

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

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

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

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

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

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

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 15 of 30

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

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

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

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

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

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

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

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 16 of 30

7. DCD erred in concluding that *Caleb Court* meets the concurrency standard for police services. The Conclusions in Appendix A are hereby incorporated by reference as if set forth in full. A Police Services Agreement does not meet the requirements of Chapter 16.108 SMC. Such an Agreement will never raise the LOS to meet the adopted standard: At best it would maintain whatever LOS existed at the time payments were made. It is an impermissible *pro rata* share payment for police services.
8. The Council's discussion of concurrency in many of its prior development approval resolutions (that additional tax revenues coupled with developer funds could raise the LOS to meet the standard) could be converted into a condition which could read as follows:

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

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

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

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

10. Under the present circumstances, the best Concurrency solution would be to impose an "either - or" condition: Require compliance with a condition as suggested in Conclusion 8, above, or compliance with a condition as suggested in Conclusion 9, above. Unfortunately, the Police Services Agreement approach does neither.
11. The Council's adoption, without any comment or reservation, of the Examiner's Findings of Fact and Conclusions in the *Hammer PUD* case must be accorded some importance, especially in view of the

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 17 of 30

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

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

The Examiner recognizes that

Council decisions made in the context of a quasi-judicial proceeding on a particular application establish the "law of the case" but do not establish legal precedent for any other cases. (The same holds true for Examiner Decisions and Superior Court judgments. Legal precedent for other cases is established only by published appellate court opinions.)

However, when the Council rules in a general, broad fashion regarding the meaning, interpretation, and/or implementation of one of its enactments, where the enactment is amenable of more than one reasonable interpretation, and where the Council's ruling is a rational interpretation of the enactment, it is prudent for the Examiner to consider that ruling as a statement of the Council's intent and to follow it in future cases.

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

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

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

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 18 of 30

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

13. If the Council were to conclude after review of all the evidence that a cul-de-sac design as proposed were acceptable, the Examiner would recommend that Bughi's request (eliminate the easement across her property) be granted and made a condition of approval. If, on the other hand, the Council agrees with the Examiner that a through street design will better serve the public use and interest, then the Examiner would recommend that Bughi's request be denied: The existing easement would likely be incorporated into the street extension when the properties to the south redevelop.
14. If the Council were to conclude after review of all the evidence that a cul-de-sac design as proposed were acceptable, approval should include appropriate conditions. Under those circumstances, the recommended conditions of approval as set forth in Exhibit 19 are reasonable, supported by the evidence, and capable of accomplishment with the following exceptions:
  - A. The plan reference in Recommended Condition 1 is inaccurate and incomplete. The correct plan reference would be Exhibit 23.6, not Exhibit 2. Further, the typical house plans need to be incorporated as well. Those plans are found in Exhibit 23.13.
  - B. Land use approvals run with the land. Therefore, the word "applicant" is not the best choice to use in conditions as the party which was the original "applicant" may not be the eventual developer. DCD has mixed "applicant" and "developer" in the Recommended Conditions. All references to "applicant" should be changed to "developer."
  - C. Recommended Condition 24. The Examiner recommends that this concurrency condition be revised to read as follows:

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

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

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 19 of 30

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

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

- D. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 12 and 13 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.
15. Any Finding of Fact deemed to be a Conclusion is hereby adopted as such.

**RECOMMENDATION**

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

Recommendation issued November 13, 2007.

vs\ John E. Galt (Signed original in official file)

John E. Galt,  
Hearing Examiner

**NOTICE OF RIGHT OF RECONSIDERATION**

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

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 20 of 30

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

**NOTICE OF COUNCIL CONSIDERATION**

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

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

**RECOMMENDED CONDITIONS OF APPROVAL**  
**FPPUD06-001**  
***Caleb Court***

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

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

**Preliminary Plat and General PUD Design –**

1. The general configuration, lot shapes and sizes, setbacks, site density, areas of open space, and typical house designs shall be as indicated on Exhibits 23.6 and 23.13 subject to these Conditions of Approval. Revisions to approved preliminary Planned Unit Developments are regulated by SMC 16.10.160(D) and (E); revisions to approved preliminary subdivisions are regulated by SMC 16.28.360. The Final PUD map shall be recorded as an amendment to the underlying zoning following Final PUD approval.
2. In accordance with SMC 16.28.340, the developer shall prepare a developer agreement subject to approval of the City. The agreement shall specify the requirements for construction of all infrastructure improvements, including plan submittals, inspections, bonding, private improvements, right-of-way improvements and facilities associated with the PUD, including improvements to all common areas. Site construction drawings shall be designed consistent with the conditions of approval. Site work shall not begin until City approval of the site development agreement.
3. The developer shall include screening fences consistent with SMC 16.12.120 at the rear property line of all lots prior to final inspection of the homes.
4. The developer shall establish a homeowners' association to assume responsibility for maintenance of common areas. The homeowners' association shall be recorded with the plat. The wording and conditions of the homeowners' association shall be subject to City approval prior to Final Plat.
5. The developer shall maintain the landscaping, open space improvements, drainage facilities, and other common areas within the site for a three-year period following installation. Such maintenance shall be secured with a performance bond filed with the City. Subsequent to the three-year period, maintenance responsibility shall be passed to the homeowners' association.

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 22 of 30

**Parking –**

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

**Open Space –**

7. Proposed landscaping and improvements shall be constructed prior to occupancy of homes as generally indicated on the master site plan (Exhibit 2).
8. Play equipment and benches shall be installed in the Recreation Tract 999 and meet the requirements of Chapter 16.72 SMC.

**Flood Plain –**

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

**Water –**

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

**Sewer –**

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

**Surface Water Management –**

12. During grading and construction activities, the developer shall retain and manage on-site surface and storm water within the site per the recommendations of the *Drainage Report* revised September 13, 2007 prepared by Site Development Associates, LLC. (Exhibit 23.9)
13. During site development, the developer shall inspect weekly, maintain, and repair all temporary and permanent erosion and sediment control BMPs to assure continued performance. During the wet weather construction period, the access road and on-site utilities shall be phased to minimize open soil exposure.
14. The temporary stormwater management facilities shall be constructed before any significant amount of site grading commences.

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 23 of 30

**Transportation –**

15. Final street design, including paving, sidewalks, frontage improvements, parking, and emergency access must be approved by the City Engineer prior to construction. Replacement of the existing turnaround on Salmon Run North shall include extension of sidewalks, driveways and front lawns for affected lots as needed.
16. Street lighting shall be required on the on-site street. Prior to site development, the developer shall submit a detailed lighting plan that depicts continuous street illumination throughout the PUD to City staff for review and approval (SMC 16.10.120(B)(4)(a)). A master meter will be installed with monthly costs being borne by the Homeowners Association.
17. The developer shall post a five-year maintenance bond with the City to ensure effective implementation of pervious surface sections on the proposed street system, if pervious concrete roads are constructed. If an alternate asphalt and concrete street is constructed a two year maintenance bond will be required.

**Other –**

18. The developer shall demonstrate sufficient water flow from the proposed fire hydrants for review and approval by the City Engineer and Fire District prior to the issuance of occupancy permits.
19. Prior to construction, the developer shall prepare an erosion control plan subject to review and approval by the City Engineer.
20. During construction, the developer shall ensure that trucks are cleaned before leaving the site. The developer shall provide street cleaning of Salmon Run North during site clearing, grading and filling and shall promptly clean up any dirt, mud or other material deposited on public streets and shall be responsible for cleaning storm drains in public streets that are impacted by the construction.
21. All site improvements including streets, sidewalks, drainage improvements, open space landscaping and improvements, and other common area improvements shall be completed prior to Final Plat, with the exception of the final paving of streets. Alternatively, the City may approve a financial bond or assurance for items not completed prior to Final Plat. All site improvements, not including individual homes, must be installed prior to final inspection of the first home.
22. The existing house and structures proposed for demolition shall be moved, demolished, or otherwise modified so that they are in compliance with the Sultan Municipal Code prior to final plat approval.
23. The developer/developer shall pay traffic, recreation, and school impact fees and their administrative processing costs in accordance with Chapters 16.112 and 16.116 SMC.

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 24 of 30

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

**APPENDIX A  
GENERAL FINDINGS OF FACT AND CONCLUSIONS REGARDING CONCURRENCY**

**FINDINGS OF FACT**

- A. The currently adopted LOS standard is 2.6 uniformed officers per 1,000 population. (2004 Comprehensive Plan, Appendix B, p. 2.74) (The LOS standard in the prior 1994 Comprehensive Plan was two police vehicles per 1,000 population. (2004 Comprehensive Plan, Appendix B, pp. 2.74 and 2.75))
- B. The City conducted the inventory which formed the basis of the currently adopted LOS standard in 2003. It used an estimated 2003 population of 3,814 to develop that standard.<sup>10</sup> (2004 Comprehensive Plan, Appendix B, p. 2.75) The City had 10 full-time uniformed officers in 2003. (2004 Comprehensive Plan, Appendix F, pp. 214 – 215) The ratio of uniformed officers to population in 2003 when the LOS inventory was conducted, based on the population number used, was 2.6 officers per 1,000 population. (2004 Comprehensive Plan, Appendix B, p. 2.74)
- C. Police services LOS concurrency first was challenged and became an issue in the *Cascade Breeze Estates* and *Steen Park* applications in the Spring of 2006. [FPCUP05-002 and FPCUP05-003, respectively] It remained a sticking point through the *Skoglund Estates*, *Vodnick Lane*, *AJ's Place* [BSP05-001], *Twin Rivers Ranch Estates*, George 6-plex, and *Hammer PUD* applications. In each of those cases the Examiner held that Chapter 16.108 SMC did not establish a proportionate mitigation payment system. (Official notice)

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

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

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

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 26 of 30

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

4. The City's existing Level of Service for police is below the adopted LOS in the Comprehensive Plan. The LOS failure for police, however, was not caused by this proposed Development, and the further reduction in the LOS caused by this proposed Development is modest by comparison to the existing deficiency.
5. The Council takes notice of the Recommendations in the Prothman Report accepted by the Council and Ordinance 900-06. The City has adopted a utility tax applicable to its municipal utilities and has received Recommendations for additional tax adoptions, including a utility tax on cable television service, an increased real estate excise tax, and a B & O tax. Other funding sources could include potential developer loans to advance the receipt of payment of needed funds, and monies contributed by proposed development for their impacts on the LOS. A combination of developer agreements and public funds will put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised.
6. The Council takes notice of the Applicant's offer at the Closed Record Hearing to deliver to the City a Developer Agreement to pay Applicant's incremental share for a police officer for one year.
7. Based upon the foregoing, this proposed Development is deemed concurrent.

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

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

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 27 of 30

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

### CONCLUSIONS

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

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

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

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

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 28 of 30

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

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

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

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

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

---

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

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

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 29 of 30

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

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

- E. A concurrency recommendation or certificate must be based upon facts. Those facts must include the (estimated) population of the City at the time of the application for which concurrency is sought, the number of residents expected to be added by the proposed development, and the amount of the affected service then available in the community (For example, the number of uniformed officers in the police department; the total acreage of parks, recreation, and open space using the same methodology as used in the 2003 inventory.) Given those facts, LOS for each required service area may be calculated. Without those facts, LOS cannot be calculated. If the LOS cannot be calculated, then no favorable conclusion is possible regarding concurrency.
- F. The present LOS for police services is far below the standard established within the 2004 Comprehensive Plan. Additional residential development within the City will only serve to further lower the LOS.
- G. Nothing has been presented to convince one that a Police Services Agreement patterned after those offered in previous cases would guarantee that the police services LOS will meet the established standard when the development occurs – or even six years later. The concept underlying the offered agreements suffers from several shortcomings. First, even if fully funded all at once, the Police Services Agreement would fund only a miniscule fraction of the cost of one police officer for one year. The City cannot hire a tiny fraction of a person. Even if it could, the LOS would still be woefully below the established standard – and would fall back again after the one year of funding ended.

HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

Freed, LLC

November 13, 2007

Page 30 of 30

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

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

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

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

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

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

RECEIVED  
NOV 26 2007

BY: .....

BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SULTAN, WASHINGTON

In Re: CALEB COURT

FFPUD06-001

FREED LLC'S APPEAL OF THE  
HEARING EXAMINER'S DENIAL OF  
PLANNED UNIT DEVELOPMENT

**I. RELIEF REQUESTED**

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

Specifically, Freed requests:

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

APPEAL OF HEARING EXAMINER'S  
PUD DECISION

*A. McCallister*

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

## 3 II. EVIDENCE

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

## 6 III. ANALYSIS

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

### 8 A. **The Caleb Court Project proposed right-of-way reductions are consistent 9 with SMC 16.10.120(B)(4)(b) as well as the previously approved and 10 immediate adjacent Salmon Run North**

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

APPEAL OF HEARING EXAMINER'S  
PUD DECISION

1  
2 **B. The proposed cul-de-sac length meets the public interest in that in**  
3 **provides safety and privacy for the residents of Salmon Run North and**  
4 **the proposed Caleb Court development and alternative intersections are**  
5 **not safe or appropriate**

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

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

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

APPEAL OF HEARING EXAMINER'S  
PUD DECISION

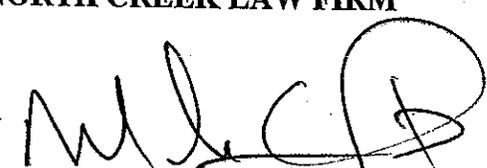
1 developments place on the system as well as address any existing shortfalls that exist prior to  
2 their arrival in the City. The appropriate level of police services and how to fund the same is  
3 essentially legislative in nature and is best left to the Council and not the Examiner. If the  
4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

9 **IV. CONCLUSION**

10 For the foregoing reasons, Freed respectfully requests that the Council reject the  
11 Examiner's decision, find that Caleb Court is compliant with the SMC and approve the PUD.  
12

13 DATED this 26th day of November, 2007.

14 **THE NORTH CREEK LAW FIRM**

15  
16  
17  
18 By: 

19 Mark C. Lamb, WSBA #30134  
20 Attorney for Applicant Freed LLC  
21  
22  
23  
24  
25  
26

APPEAL OF HEARING EXAMINER'S  
PUD DECISION

**City of Sultan  
Staff Report and Recommendation  
To the Hearing Examiner  
Revised October 15, 2007**

---

**Caleb Court P.U.D.  
File Number FPPUD06-001**

---

The following Staff report amends a previously issued report and is based on certain plan revisions filed with the City on October 15, 2007.

**I. Application Information and Process**

Request

The Applicant requests Approval of a Preliminary Plat/PUD to subdivide 2.71 acres into 16 single-family residential lots and two open space tracts. Grading Permits, an NPDES Permit, Building Permits and Construction Plan Approval are also required.

The average lot size of this development would be 4,756 gross square feet, with the smallest lot being 4,000 square feet. The project is located at 803 High Avenue in Sultan. The site is currently zoned MD (Moderate Density) and the site is designated for Moderate Density Residential (MDR) in the Comprehensive Plan.

Owner Parcel 1/Applicant      Freed Properties, LLC  
14704 100<sup>th</sup> Ave NE  
Bothell, WA 98011  
Attn.: Joshua Freed

Owner Parcel 2                      Richard and Linda Dunlap  
803 High Avenue  
Sultan, WA 98294

Agent: Alan Whipple  
J2W Project Management  
15919 63<sup>rd</sup> DR SE  
Snohomish, WA 98296

Engineer                              Ken J. McIntyre, P.E.  
Site Development Associates, LLC  
10117 Main Street  
Bothell, WA 98011

City Planner                         Rick Cisar, Planning Director

Attachment 2

City of Sultan  
319 Main Street, Suite 20  
P.O. Box 1199  
Sultan, WA 98294

Reid Shockey, Consultant to the City  
Shockey/Brent, Inc.  
2716 Colby Avenue  
Everett, WA 98201

Parcel Numbers                    28083200300300  
   28083200312600

Location

The project is located at 803 High Avenue, Sultan, WA 98294. It is within the southwest quarter of Section 32, Township 28 North, Range 8 East.

Application History

A Pre-Application meeting with the City was held on June 28, 2006.

The Application for Caleb Court P.U.D. was submitted on October 18, 2006. The application was determined complete as of January 17, 2007. A Notice of Application was mailed to nearby property owners on March 20, 2007 by the applicant. He filed an affidavit of mailing on March 21, 2007.

The City conducted an environmental review of the proposal and issued a Mitigated Determination of Non-Significance on August 10, 2007. Required mitigation measures address compliance with City codes, regulations, and codes addressing development in the flood fringe. No appeals were received.

The City met with the applicant on April 11, 2007 to discuss potential conflicts with City code regarding street standards. The applicant subsequently submitted a package of revised plans and supporting documents on June 13, 2007, including a revised application form, SEPA checklist, ownership statement, legal description, open space calculations, and drainage report. The revised plan set includes a Title Sheet, TESC Plan, Grading and Drainage Plan, Profiles and Sections, Utility Plan, and Landscape Plan.

Following review of the revised plans, the City advised the applicant of concerns regarding open space, lot area and dimensions and parking. The applicant subsequently revised the proposal and submitted revised plans and supporting documents on September 14, 2007. The revisions included a reduction to 16 lots, elimination of perimeter buffers and conservation easements, and clarification of on-street parking.

A revision to the plan was initially submitted to the City on October 3, 2007. The revision included:

- conversion of former Lots 6 and 7 to Tract 998 Recreation and Open Space to address a concern by the City over minimum lot width requirements and width of access at the street.
- a reduction in size of Tract 999 to accommodate relocated “Lots 6 and 7” which are now depicted as new Lots 10 and 16.

The applicant subsequently submitted a complete set of drawings and supporting documentation to the City on October 15, 2007 reflecting the changes noted above, along with a Request for Modification of Road Standards to allow a cul-de-sac for the proposal to exceed the maximum length permitted by code.

Existing Site and Surrounding Land Uses

The site consists of two parcels, side by side, and is currently developed with two existing residences. The applicant anticipates demolishing one residence and leaving the other residence, which will occupy Lot 15. The site is flat and rolling with a swale running east/west through the site, near the center of the site. It appears to be the remnant of an oxbow that now appears dry, and is designated a flood fringe within the 100-year flood plain according to a FEMA map produced for the City. It has slopes of 40%, approximately 4 feet high. The remainder of the site is less than a 5% slope.

All adjacent properties are zoned MD and developed as single-family residential, with the exception of Sultan High School directly to the north, which zoned Low Moderate Density (LMD). The property owners to the west have applied for approval of a Conditional Use Permit to develop a six-unit townhouse on that site (CUP06-004).

Utilities, Fire and School Districts

Electricity: Snohomish County PUD  
Natural Gas: Puget Sound Energy  
Water: City of Sultan  
Sewer: City of Sultan  
Telephone: Verizon  
Fire District: Snohomish County Fire Protection District No. 5  
School District: Sultan School District No. 311

Related Permits and Reviews

Development of the site will require a Preliminary and Final Plat/PUD approvals through the City of Sultan, Grading Permits, Construction Plan Approval, NPDES Permit and Building Permits.

Procedure for Planned Unit Development (PUD) Approval

The City’s PUD Ordinance, Section 16.10.160 of the Sultan Municipal Code (SMC), requires that PUD approval be processed pursuant to Chapter 16.120 SMC, with review done by the Planning Director, with input from the City Engineer, Public Works Director,

and the Building Official. In accordance with SMC 16.10.080, PUD's are reviewed by the Hearing Examiner with a recommendation to the City Council.

After receipt of the Hearing Examiner's recommendation, the City Council will hold a Closed Record Hearing and make the final decision, in accordance with SMC 16.10.090.

Following Council Preliminary PUD approval, the applicant is required to file an application for Final PUD approval within 12 months in accordance with SMC 16.10.150 and 160. Final PUD approval is contingent upon the fulfillment of City department review requirements and the payment of applicable fees. The Final PUD is then transmitted to the City Council with a recommendation of approval if it is in substantial compliance with the approved Preliminary PUD. If the PUD is not in substantial compliance with the approved Preliminary PUD, the applicant shall file for and process an amendment to the Preliminary PUD, using the same procedures and requirements for the initial Preliminary PUD. The final decision is issued by the City Council and is appealable to Superior Court, pursuant to the provisions of SMC 16.120.050 and Chapter 36.70C RCW.

If the project is to be phased beyond the expiration of the initial PUD permit approval, preliminary and final approval of a Master Site and Phasing Plan is required per 16.10.040.

#### Procedure for Plat Approval

The City's Subdivision Regulations, Chapter 16.28 SMC, provide the standards and process for Preliminary Plat Review. In accordance with SMC 16.28.330, the Hearing Examiner shall hold a Public Hearing, make written findings and make a recommendation to the City Council. The City Council may approve, disapprove or return the proposed subdivision for modification at a closed record hearing following the Hearing Examiner's recommendation, in accordance with SMC 16.28.340. Council approval of a Preliminary Plat is valid for up to three years in accordance with SMC 16.28.340.

#### Review Criteria

Criteria for review and approval of PUDs are located in Chapter 16.10 of the Sultan Municipal Code. The review criteria for preliminary plats are contained in SMC 16.28.

## **II. Land Use and Zoning**

### Zoning

The site is zoned as Moderate Density (MD). This zone includes areas that are, at the present time, largely served by municipal sewer and water lines. This zoning district is intended to accommodate medium density residential development, active and passive recreational facilities, small office development, as well as neighborhood-oriented commercial enterprises. Planned Unit Developments are a permitted use in this zone.

Comprehensive Plan Designation

The site is designated for Moderate Density Residential (MD). This land use designation includes areas that are at the present time, largely served by municipal sewer and water lines. This district is intended to accommodate medium density residential development, active and passive recreational facilities, small office development, as well as neighborhood-oriented commercial enterprise.

Density/Dimensional Requirements

SMC 16.10.110B establishes Location Criteria for single-family PUD's, in addition to the Comprehensive Plan criteria noted above. The following is a summary of how the application complies with these criteria:

- The minimum site area for a PUD-SF in the MD zone is 2 acres. The site contains 2.71 acres.
- The site will obtain access from a public local access street, Salmon Run North, which has sidewalks on both sides. High Street, a collector arterial street, is located one block to the south.
- A public pedestrian trail is located one block to the east, which is planned to be extended to intersect the City's bike lane system at Sultan Basin Road.
- A bus stop is located one block to the south.
- Public services and utilities are close by or adjacent to the site and will not require extensions or enlargements.
- The PUD is adjacent to Sultan High School. The site is within convenient walking distance of the school.
- The project shall be compatible with adjacent uses. The applicant is proposing single-family detached houses on individual lots with a sight obscuring fence along the perimeter.
- The latest revised proposal with 16 lots complies with the underlying density provisions of the MD zone.
- Development standards are governed by the underlying zone district and may be modified as described in SMC16.10.120.

**Applicable sections from 16.10.120 Residential PUD development standards.**

- The minimum lot size in a PUD in the MD zone is 4,000 square feet, and the average lot size must not be less than 4,500 square feet. The proposed lots, as revised September 14, 2007, range in size from 4,000 to 8,796 square feet; the average lot size is 4,756 square feet.

- The applicant has indicated he will comply with the 35% maximum lot coverage. He submitted typical house plans for the lots that indicate a lot coverage of approximately 1,500 square feet each, or approximately 37% for the smaller lots. Within a PUD a higher lot coverage per lot is permissible when such modifications are compensated by open space areas elsewhere in the PUD.
- Development standards for a PUD-SF in a Moderate Density (MD) zone are outlined in Chapter 16.10.120:

*The following development standards shall apply to all types of residential PUDs (MF, SF and MHP):*

*B. Residential Development Standards. The following criteria shall be applied by the city in reviewing and approving any requested variation from the residential development standards found in the underlying residential zoning district:*

*1. Building Spacing or Side and Rear Yards. The requirements for building spacing, or side and rear yards as they are often defined, is based on several related factors. Setback requirements within the PUD may be granted by the planning director if the proposed design incorporates the following features:*

*a.. Privacy. The minimum side yard requirement is intended to provide privacy within the dwelling unit. Where windows are placed in only one of two side-facing walls, or there are no windows, or where the builder provides adequate screening for windows, or where the windows are at such a height or location to provide adequate privacy, the building side yard spacing may be reduced to a zero lot line; provided, a minimum of five feet is maintained between buildings and structures on the adjacent lot and appropriate easements are provided to maintain spacing and permit maintenance access. The minimum rear yard requirement is intended to provide privacy for the outdoor area behind the dwelling unit. Where physical elements such as fences, screens, or open space are provided, rear yards may be reduced to 10 feet.*

*.d. Rear Yard Use. Areas behind buildings provide a usable yard area for residents and can be used for landscaping, recreation, storage, and other residential accessory uses. In areas where physical elements are provided for privacy, a reduction from 20 to 10 feet will be permitted.*

The applicant is complying with the minimum side yards of 5' in a PUD, but is proposing to reduce the minimum rear yard from 20' to 10'. The applicant is proposing to install a sight obscuring fence along the rear lot lines of all lots. Based on the proposed location of the structures on each lot it appears the applicant could comply with the minimum 20' setback on most lots, although under the PUD regulations, a 10' setback is allowed. Staff supports the applicant's request.

*f. Front Yard. The minimum front yard is intended to provide privacy and usable yard area for residents. In practice, however, front yards are rarely used, so that only the*

*privacy factor is important. Where a developer provides privacy by reducing traffic flow through street layout such as cul-de-sacs, or by screening or planting, or by facing the structure toward open space or a pedestrian way, or through the room layout or location, and access to garages of the home face perpendicular to or are not visible from the street frontage, then it is possible to reduce the front yard setback to 15 feet. Also, if 60 percent of the front facing portion of a structure consists of a front porch, setbacks may also be reduced to 10 feet for the front yard. Front porches and stoops which contain less than 60 percent of the front facade may project into the setback; provided, they do not interfere with minimum vehicular sight distance requirements.*

The applicant is proposing 15' front yard setbacks, and 18' setbacks for garages from the back of the sidewalk. The first 10' of that setback will be overlaid with a public easement to be developed with a 5' wide planter strip and 5' wide sidewalk. The planter strip will be located either in front of, or behind the sidewalk depending on whether pervious concrete is used. The City has recommended the front yard setback from garages be a minimum of 18' from the back edge of the sidewalk to prevent obstruction of the sidewalk by vehicles parked in the driveways. The revised road configuration is a cul-de-sac which would justify the reduced setback.

**2. Lot Size and Lot Coverage.** *The hearing examiner, for the purpose of promoting an integrated project that provides a variety of housing types and additional site amenities, may recommend reductions in the area of individual lots and increases in the lot coverage within a PUD from the required lot area and lot coverage for the zoning district; provided, any such modifications shall be compensated by open space areas elsewhere in the PUD. Open space shall not include areas designated as public or private streets.*

The proposal is for single-family homes on individual lots that are smaller than normally allowed in the zone. The minimum open space required for typical subdivision in the MD zone is 15%. The applicant is proposing to provide 20% open space to justify the reduced lot sizes. The applicant is not counting the public street nor the public easement for sidewalks and landscaping as open space. Lot size reductions are justified.

**3. Open space shall be governed by the requirements of SMC 16.10.140.**

See an analysis of 16.10.140 Open space requirements under Recreation and Open Space below.

**4. Streets.** *PUDs shall provide effective street and pedestrian networks. New developments shall also provide multiple access points to existing streets and plan for access to future adjacent developments.*

The proposal is accessible from only one access point, Salmon Run North, a public local access street with a temporary turnaround at its northern terminus, and sidewalks on both sides of the street. It is stubbed to the eastern property line of the site with the intention of being extended through the site to serve adjoining properties to the west, if

appropriate. The site currently has access to High Avenue, a collector arterial street, to the south over an easement that would be removed with the recording of this subdivision. At the City's request the applicant has revised his proposal to extend Salmon Run North as a public street with a permanent cul-de-sac with sidewalks on both sides serving the proposed lots.

No public vehicular access to adjoining properties is proposed. If the application of the property owners to the west for approval of a Conditional Use Permit (CUP06-004) to develop a six-unit townhouse on that site is approved, the need for extending the public road to the west will be precluded. If not, staff has determined a public street connection to the west is not necessary and the adjoining property would best be developed with access from High Street.

The applicant has submitted a Request for Modification from Section 1.09 of the Street Classifications and Minimum Design Standards to allow the cul-de-sac to exceed the maximum permitted by code, per Section 1.06 of the City of Sultan Design Standards and Specifications. The code establishes a maximum length of 300', while the proposed cul-de-sac would be 850' in total length. He correctly notes the existing high school to the north, the pending development to the west, and the adjacent single family homes to the south and points out that even if the proposed street were extended to the south it would create an intersection with High Avenue only 250' west of its intersection with Salmon Run North. In addition the applicant is proposing to replace the temporary turnaround at the present terminus with a 24' wide street section with sidewalks on both sides and a 24' radius bubble to permit vehicles to turn around prior to entering the development. Staff supports the applicant's request which is consistent with staff's previous recommendation for the Timber Ridge Planned Unit Development which provided a turn around bubble on 141 Street SE.

The requirement for multiple access points is not appropriate in this case given the small site area and logical termination of Salmon Run North as a cul-de-sac on the site.

***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.***

The City recommends the internal street and sidewalks be public. The applicant has proposed to construct a street within a 35' of public right-of-way and to provide a planting strip and 5' wide sidewalk on each side within a public easement. The planter strip will be located either in front of, or behind the sidewalk depending on whether pervious concrete is used. The decision on actual location will be made during the review of plat engineering designs.

***b. Right-of-way width and street roadway widths may also be reduced, especially where it is found that the plan for the PUD provides for the separation of vehicular and pedestrian circulation patterns and provides for adequate off-street parking facilities.***

The applicant proposes to reduce the public right-of-way from the standard width of 60' down to 35'. Sidewalks are proposed on both sides of the street, separated by a 5' wide planting strip, within a public easement. On-street parking would be allowed on one side of the street, on the east side adjacent to Lot 11. The proposed house plans indicate each lot will have a two-car garage, and based on the proposed garage setback each of the lots could have two additional off-street parking stalls in tandem, on the driveways. The reduction in right-of-way width is justified.

***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.***

No school bus stops are identified in the application. The nearest transit stop is approximately one block to the south on High Avenue at 7<sup>th</sup> Street.

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

The proposed access route does not have alternative routes and does not join to an arterial road.

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

The proposed public street would provide direct emergency vehicle response to all points within the development.

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

This criterion is not applicable given the proposal's small scale.

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

The proposal is within walking distance of downtown and public schools.

***5. Traffic Calming. Traffic calming control devices may be considered by the city engineer where appropriate to control excessive speed and volume of traffic on neighborhood streets. These devices may include, but are not limited to, traffic circles, streets narrowing, lane stripes, traffic control signing, chicanes, and curb bulbs.***

The proposal will be at the terminus of a public street with a circular turnaround. The applicant is also proposing to provide a new turnaround at the present terminus of Salmon Run North.

Off-Street Parking Requirements

Single-family dwelling units are required to provide two off-street parking spaces per dwelling unit per SMC 16.60.1440. The applicant shows a two-car garage for every house in his proposed house plans, and based on the proposed garage setback each of the lots could have two additional off-street parking stalls in tandem, on the driveways.

Recreation and Open Space

Per SMC 16.10.140, all PUDs shall be required to provide open space in the amount of 20% of the gross land area of the site, in the minimum types specified in subsection (C) of this section. Any combination of open space types may be used to accomplish the total minimum area required to be reserved as follows:

<b>Open Space Percent of Gross Category Land Area</b>	
1. Usable	15% minimum
2. Conservation	No maximum or minimum
3. Buffer	2% maximum
4. Constrained	2% maximum
5. Unusable detention areas	5% maximum

**A. For the purpose of this chapter, open space shall be described as follows:**

**1. "Common open space" means a parcel or parcels of land or an area of water or a combination of land and water within the site designated for a PUD which is designed and intended for the use or enjoyment of the residents or owners of the development. Common open space may contain such complementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of the residents or owners of the development.**

The applicant proposes a total of 24,833 square feet of open space, or 21% of the site as shown on his preliminary open space plan.

**2. "Usable open space" means areas which have appropriate topography, soils, drainage, and size to be considered for development as active and passive recreation areas for all residents or users of the PUD. Detention areas may be considered under this category providing all the usable standards are met.**

The total Usable Open Space for the proposal is 24,833 square feet located within Tracts 998 and 999, Recreation and Open Space.

4. *“Buffer open space” means areas which are primarily intended to provide separation between properties or between properties and streets. Buffer open space may, but does not always, contain usable open space or conservation open space.*

The applicant does not propose to provide buffers in the latest revised proposal, however he does show a sight obscuring fence and typical plantings along the property lines within the lot areas.

### **III. Wetlands, Streams, Steep Slopes, and Floodplains**

#### Wetlands and Streams

No wetlands or streams are present on the subject property.

#### Steep Slopes

A small slope of 40%, approximately 4' high exists on the site. The remainder of the site contains slopes of less than 5%.

#### Floodplain

A portion of the site, the swale running east/west through the site near the center of the site, is located in a FEMA Floodway Fringe Area within the 100-year flood based on current FEMA and Snohomish County maps. New mapping done by the City would remove the site from the floodplain; however, FEMA approval is required and FEMA is in the early stages of a 2-year study to review the new data. In the meantime, SMC Chapter 17.08 addresses Flood Damage Prevention. The applicant is proposing to fill the swale and to comply with the City's flood damage prevention requirements. The City has established a base flood elevation (BFE) at 126'+/- and allows filling in the fringe without requiring compensatory storage, requires housing to be 1.6' above the BFE.

### **IV. Water, Sewer, and Stormwater Management**

#### Water Availability

The City of Sultan Public Works Department has issued two letters stating the Public Water System is capable of and will supply water to nine Infill Units and seven additional lots in accordance with SMC 16.150.090 "I" Definitions. Given the two existing connections, there will be water available to serve 18 lots. The water supply facilities necessary to provide appropriate water supplies to this site have been designed, approved and are or will be installed per WAC 248-54. The developer/owner may need to build improvements to the City's water system in order to provide water service to the owner's site.

The applicant has since revised his proposal to 16 lots and received a new letter of water availability for 16 infill lots from the City dated October 2, 2007.

Sanitary Sewer Availability

The City of Sultan Public Works Department has issued a letter stating the Public Sewer System is capable of and will supply sewer service to nine infill connections in accordance with SMC 16.150.090 "T" Definitions. On November 30, 2006 the City of Sultan issued a letter stating it is capable of and will supply seven additional sewer service connections. Two connections already exist on the site. Although the project was initially scheduled to be phased due to water and sewer availability constraints, the Department of Public Utilities has agreed to allow 16 new hook-ups for the entire site in addition to the two existing hook-ups, for a total of 18.

The applicant has since revised his proposal to 16 lots and received a new letter of sewer availability for 16 infill lots from the City dated October 2, 2007.

Storm Water Management

Stormwater facilities will provide water quality measures to remove pollutants from the storm system, in accordance with City of Sultan Design and Standards in SMC 16.92.040 and 16.92.090 Plan Adherence. The applicant has commissioned a Drainage Report by Site Development Associates; LLC revised September 13, 2007. The applicant has indicated his intention to infiltrate stormwater runoff from the project site by use of pervious concrete roadways. Roof runoff will be collected through downspouts and directed to small infiltration basins. A Stormwater Management Permit will be required for this project. A Stormwater Management Plan using current Best Management Practices (BMPs) shall be completed prior to final approval of this project.

**V. Traffic and Circulation**

Lot Access

Access to the site will be provided by Salmon Run North. The requirement for site access to a collector street or arterial per SMC 16.10.110 B2 is not applicable in this case because the requirement is for sites of ten acres or more or 40 units or more. Because the proposed project is smaller than ten acres and is for less than 40 units, it is not subject to the requirements of the above referenced code. See preliminary plat map.

Street Standards

The applicant proposes to serve the development with a public street extension from the terminus of Salmon Run North, a public local access street. The applicant is proposing to reduce the right-of-way from the standard 60' down to 35' and install planting strips and sidewalks within public easements adjacent to the right-of-way. The City of Sultan Design Standards and Specifications allows for reduced rights of way within PUD's especially where it is found that the plan for the PUD provides for the separation of vehicular and pedestrian circulation patterns and provides for adequate off-street parking facilities. The City believes the applicant has adequately addressed these concerns.

Site Distance

Site distance analysis was performed along Salmon Run North using the American Association of State Highway and Transportation Officials (AASHTO). The speed along this roadway is 25 mph, so a design speed of 35 mph was used for analysis. Based on a design speed of 35 mph the stopping site distance required is 250 feet and the entering sight distance is 390 feet. Field measurements indicate more than 400 feet of stopping and entering site distance at the driveway location for vehicles approaching from the south via Salmon Run North.

Traffic Impacts

The project will generate 9.57 new daily trips per lot (ADT). This equates to 134 trips (based on 14 net new lots). Refer to the traffic report completed by the Transpo Group. A Traffic Concurrency Application is required with this proposal. Mitigation costs per peak hour trip for the City are \$1,837 per new PM trip. Based on the traffic report this project would generate 14 new PM peak hour trips, not counting the two existing residences. The applicant has acknowledged that Traffic Impact Fees shall be paid to the City prior to issuance of building permits.

Transit

The site is currently served by public transit. The nearest transit stop is approximately one block away from the site (High Avenue and 7<sup>th</sup> Street) in Sultan.

**VI. Other Issues**

Utilities

All utilities are available at the site to serve the development.

School Impacts

Per 16.116.010 and Chapter 82.02 RCW, the City Council can assess impact fees for school facilities. Per SMC 16.116.030, impact fees shall be paid to the City prior to building permit issuance, based on the fee schedule in place at the time of building permit application. An Agreement to pay Park, School, and Traffic Impact Fees letter (dated October 18, 2006) is included in the application packet. School impact fees are currently set a \$1,673 per single-family residence. The applicant has acknowledged that School Impact Fees shall be paid to the City prior to issuance of building permits.

Park and Recreation Impacts

Per SMC 16.112 and 16.116, the developer is required to pay Park and Recreation Impact Fees to offset the project's impact on the City's recreation facilities. The applicant has acknowledged that Park and Recreation Impact Fees shall be paid to the City prior to issuance of building permit in accordance with Chapter 16.112 and 16.116 in the above referenced letter (October 18, 2006).

Concurrency Requirements

SMC 16.108.010 states that property owners must meet the Concurrency provisions of the Comprehensive Plan as required in RCW 36.70A.70. This ensures that adequate public facilities are available and will be able to support the development's impact. Facilities subject to the review are:

- Roadways
- Potable Water
- Wastewater
- Police Protection
- Parks and Recreation

The applicant has submitted a Developer Agreement to Establish Concurrency and contribute funding to satisfy the impacts of the development. The annual cost of an officer, which was provide by the City, and identified in the agreement (Exhibit 8) is incorrect. The cost of an officer should be increased by 3.3% or \$3,658.97 to reflect the cost of living increase.

The Police Level of Service requirement is under review by the City.

The applicant has submitted an application to the City of Sultan for a Certificate of Concurrency for the PUD. This certificate states this proposed development will not impact the level of service below that of the adopted Comprehensive Plan for the City of Sultan.

Fire Hydrants

One fire hydrant is required every 300 feet in Planned Utility Districts. The final plans for the proposed project will be required to show a hydrant every 300'.

**VII. SEPA**

A SEPA Checklist for the proposal dated October 18, 2006 has been completed and submitted. An Environmental Mitigated Determination of Non-Significance was issued by the City on August 10, 2007. Required mitigation measures address compliance with City codes, regulations and development in the flood fringe. No appeals were received.

**VIII. Public Notice**

Public notice is required for all residences within 300-feet of a proposed project and no less than ten days prior to public hearing. Posting is also required on the subject property. At least two signs, one sign on each frontage abutting a public right-of-way or at the point of access to the property, are required. The property shall remain posted until all appeal periods have expired. Signs for posting shall be provided to the applicant by the City at a cost identified in the current fee schedule. Such mailing and posting shall be evidenced by submittal of a verified statement regarding the date of mailing and date and location of posting. All posting and notice requirements are outlined in SMC 16.124.010. Posting and Notice are required for this project.

## IX. Conclusions

Staff concludes that the proposed Caleb Court PUD, with the conditions in section X below, meets the criteria for preliminary plats in accordance with SMC 16.28.330(A) and for preliminary single-family residential PUD's in accordance with SMC 16.10.110(B).

- a. The proposed preliminary PUD and plat as revised October 15, 2007 is found to be in conformance with the general purposes of the Comprehensive Plan and planning standards and specifications as adopted by the laws of the State of Washington and the City of Sultan.
- b. The proposed preliminary PUD and plat makes appropriate provisions for public health, safety, and general welfare, and for open spaces, drainage ways, streets, other public ways, water supply and sanitary wastes, transit, parks and recreation, playgrounds, schools and school grounds. Street improvements, open space, and drainage should be developed in compliance with the conditions listed below.
- c. The proposed modifications to the development standards, as conditioned herein, are consistent with the provisions of SMC 16.10.120.
- d. The location of the preliminary PUD and plat is consistent with the location criteria of SMC 16.10.110(B)(2), including:
  - Being greater than two acres;
  - Located on a street that can provide direct access to the development;
  - Located so that it can connect to the off-site pedestrian and bicycle circulation system;
  - Transit is available in sufficient proximity to the site to facilitate transit access to the PUD;
  - Located in relation to utilities such that the development will not result in higher public costs;
  - Located so that the PUD will have access to schools, parks, and open space.
- e. The design of the preliminary PUD and plat, as conditioned herein, takes into account the relationship of the site to the surrounding areas. Conditions listed below are essential to ensure that the street frontages and perimeter of the site are designed in a manner compatible with the surrounding neighborhood.
- f. The physical characteristics of the site have been reviewed. Conditions are recommended to ensure that the new structures and improvements are built in compliance with the regulations of the Sultan Municipal Code.
- g. The proposed preliminary PUD and plat will serve the public use and interest by developing land consistent with the goals and policies of the Comprehensive Plan and compatible with adjacent land uses, and by providing an extension of public roads and services.

## **X. Staff Recommendation**

Staff recommends that the Hearing Examiner recommend to the City Council APPROVAL WITH CONDITIONS of the Caleb Court Preliminary PUD and Plat as revised October 15, 2007 with the conditions listed below:

### **Preliminary Plat and General PUD Design –**

1. The general configuration, lot shapes and sizes, setbacks, site density, and areas of open space shall be as indicated on Exhibit 2 subject to these Conditions of Approval. Revisions to approved preliminary Planned Unit Developments are regulated by SMC 16.10.160(D) and (E); revisions to approved preliminary subdivisions are regulated by SMC 16.28.360. The Final PUD map shall be recorded as an amendment to the underlying zoning following Final PUD approval.
2. In accordance with SMC 16.28.340, the applicant shall prepare a developer agreement subject to approval of the City. The agreement shall specify the requirements for construction of all infrastructure improvements, including plan submittals, inspections, bonding, private improvements, right-of-way improvements and facilities associated with the PUD, including improvements to all common areas. Site construction drawings shall be designed consistent with the conditions of approval. Site work shall not begin until City approval of the site development agreement.
3. The applicant shall include screening fences consistent with SMC 16.12.120 at the rear property line of all lots prior to final inspection of the homes.
4. The applicant shall establish a homeowners' association to assume responsibility for maintenance of common areas. The homeowners' association shall be recorded with the plat. The wording and conditions of the homeowners' association shall be subject to City approval prior to Final Plat.
5. The applicant/developer shall maintain the landscaping, open space improvements, drainage facilities, and other common areas within the site for a three-year period following installation. Such maintenance shall be secured with a performance bond filed with the City. Subsequent to the three-year period, maintenance responsibility shall be passed to the homeowners' association.

### **Parking –**

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

### **Open Space –**

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

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

**Flood Plain –**

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

**Water –**

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

**Sewer –**

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

**Surface Water Management –**

12. During grading and construction activities, the developer shall retain and manage on-site surface and storm water within the site per the recommendations of the *Drainage Report* revised September 13, 2007 prepared by Site Development Associates, LLC.
13. The developer shall inspect weekly, maintain, and repair all temporary and permanent erosion and sediment control BMPs to assure continued performance during construction. During the wet weather construction period, the access road and on-site utilities shall be phased to minimize open soil exposure.
14. The temporary stormwater management facilities shall be constructed before any significant amount of site grading commences.

**Transportation –**

15. Final street design, including paving, sidewalks, frontage improvements, parking, and emergency access must be approved by the City Engineer prior to construction. Replacement of the existing turnaround on Salmon Run North shall include extension of sidewalks, driveways and front lawns for affected lots as needed.
16. Street lighting shall be required on the on-site street. Prior to site development, the applicant shall submit a detailed lighting plan that depicts continuous street illumination throughout the PUD to City staff for review and approval (SMC 16.10.120(B)(4)(a)). A master meter will be installed with monthly costs being borne by the Homeowners Association.

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

**Other –**

18. The applicant shall demonstrate sufficient water flow from the proposed fire hydrants for review and approval by the City Engineer and Fire District prior to the issuance of occupancy permits.
19. Prior to construction, the applicant shall prepare an erosion control plan subject to review and approval by the City Engineer.
20. During construction, the developer shall ensure that trucks are cleaned before leaving the site. The developer shall provide street cleaning of Salmon Run North during site clearing, grading and filling and shall promptly clean up any dirt, mud or other material deposited on public streets and shall be responsible for cleaning storm drains in public streets that are impacted by the construction.
21. All site improvements including streets, sidewalks, drainage improvements, open space landscaping and improvements, and other common area improvements shall be completed prior to Final Plat, with the exception of the final paving of streets. Alternatively, the City may approve a financial bond or assurance for items not completed prior to Final Plat. All site improvements, not including individual homes, must be installed prior to final inspection of the first home.
22. The existing house and structures proposed for demolition shall be moved, demolished, or otherwise modified so that they are in compliance with the Sultan Municipal Code prior to final plat approval.
23. The applicant/developer shall pay traffic, recreation, and school impact fees and their administrative processing costs in accordance with Chapters 16.112 and 16.116 SMC.
24. The proposed development shall be subject to Police Level of Service standards in effect at the time of final plat approval.

**October 15, 2007**

---

**Rick Cisar**  
**Director of Community Development**

---

**Reid H. Shockey, AICP**  
**Consultant to the City**

**XI. List of Exhibits**

- Exhibit 1: Master Application Binder dated September 13, 2007
- Exhibit 2: Site Plan dated September 14, 2007
- Exhibit 3: Determination of Completeness January 17, 2007
- Exhibit 4: SEPA Determination DNS August 10, 2007
- Exhibit 5: Affidavit of Mailing – Notice of Application
- Exhibit 6: Notice of PUD Hearing
- Exhibit 7: Staff Report dated September 14, 2007
- Exhibit 8: Development Agreement
- Exhibit 9: Certificate of Concurrence
- Exhibit 10: Doris Bughi Comment Letter dated October 5, 2007
- Exhibit 11: Leah Laviqueure e-mail comment dated October 9, 2007
- Exhibit 12: Affidavit of Mailing Public Notice - September 26, 2007
- Exhibit 13: Tab 3 Page 3 – Open Space (replacement page)
- Exhibit 14: Proposed Site Conditions (replacement page)
- Exhibit 15: Site Plan (replacement page)
- Exhibit 16: Landscape Plan (replacement page)
- Exhibit 17: Staff Report dated October 5, 2007
- Exhibit 18: CUP George Town homes Resolution 07-22A
- Exhibit 19: Staff Report dated October 15, 2007
- Exhibit 20: Developer's Agreement dated October 17, 2007
- Exhibit 21: Hammer Resolution 07-19
- Exhibit 22: Fire Review Memo dated October 18, 2007
- Exhibit 23: New Binder submitted October 15, 2007

RECEIVED  
NOV 26 2007

BY:.....

BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SULTAN, WASHINGTON

In Re: CALEB COURT

FFPUD06-001

FREED LLC'S APPEAL OF THE  
HEARING EXAMINER'S DENIAL OF  
PLANNED UNIT DEVELOPMENT

**I. RELIEF REQUESTED**

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

Specifically, Freed requests:

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

APPEAL OF HEARING EXAMINER'S  
PUD DECISION

Attachment 3

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

3 **II. EVIDENCE**

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

6 **III. ANALYSIS**

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

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

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

APPEAL OF HEARING EXAMINER'S  
PUD DECISION

1  
2           **B.     The proposed cul-de-sac length meets the public interest in that in**  
3           **provides safety and privacy for the residents of Salmon Run North and**  
4           **the proposed Caleb Court development and alternative intersections are**  
5           **not safe or appropriate**

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

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

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

31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

APPEAL OF HEARING EXAMINER'S  
PUD DECISION

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

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
**IV. CONCLUSION**

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

DATED this 26th day of November, 2007.

**THE NORTH CREEK LAW FIRM**

By: 

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

APPEAL OF HEARING EXAMINER'S  
PUD DECISION

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

#### **2.26.150 Council consideration.**

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

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

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

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

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

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

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

#### **2.26.160 Effect of council action.**

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

#### **2.26.180 Local improvement district assessment roll hearings.**

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

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

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

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

4. Permitted Uses. The following uses shall be permitted in a PUD-MHP: all permitted, residential accessory, and conditional uses listed in the LMD and MD zoning districts, SMC 16.12.010 and 16.12.020.

5. Development Standards. PUD-MF, PUD-SF, and PUD-MHP shall be governed by the development standards of the underlying residential zoning districts, as may be modified as described in SMC 16.10.120. Manufactured home park PUDs shall also be eligible for density increases as described in SMC 16.10.120. (Ord. 793-02 § 1)

#### **16.10.120 Residential PUD density increases and development standards.**

The following density increase provisions and development standards shall apply to all types of residential PUDs (MF, SF and MHP):

A. Density Increases. A residential PUD application may have density increases as provided in this section. A residential PUD may be eligible for density increase based on one or two of the following subsections; provided, in no event may the total density increase for a residential PUD exceed 20 percent. All density increase percentages shall be calculated on the base density permitted in the underlying residential zone. The density increases are transferable within the PUD area as long as the proposed transfer is consistent with all of the requirements of this chapter and is consistent with the conditions of preliminary approval. Density increases shall be governed by the following factors, and are to be treated as additive, and not compounded.

##### **1. Density Increase for Design Factors.**

a. The project may be granted a maximum of five percent increase in density if it serves the needs of the development's residents and would include such facilities as play areas with equipment, basketball courts, handball courts, ball fields, tennis courts or swimming pools. This could also include landscaping, streetscape, open spaces, plazas, pedestrian facilities and recreational areas and recreational facilities in excess of those minimums required by the underlying zoning.

b. The project may be granted a maximum of five percent increase in density if the siting

of the proposed development promotes the use of visual focal points, existing significant natural physical features such as topography, critical areas, view, sun and wind orientation, circulation patterns, physical environment, and energy efficient design.

c. The project may be granted a maximum of five percent increase in density if the development provides at least one of the following amenities:

i. If the project is designed such that the built environment includes preservation and restoration of historically or architecturally significant structures and/or consists of architectural styles that are internally consistent with the project as a whole and with the existing architectural styles in the neighborhood, but does not include normal maintenance such as painting, roofing and tuck pointing;

ii. If the scale of the structures is reduced from the maximums permitted by the underlying zone in an effort to develop a more pedestrian-friendly scale and to be consistent with existing development in the neighborhood;

iii. If the parking areas are broken up by landscape features in excess of the minimums required by the underlying zoning;

iv. If the project contains variation in building siting (i.e., clustering) and building setbacks to facilitate efficient use of the site, while maximizing privacy for residential units in a majority of the units and to preserve slopes, streams, wetlands or other environmental features; and/or

v. If the proposed structures incorporate energy efficient design to at least a level of efficiency that exceeds the state standards by one base increment, or if the project incorporates the use of renewable energy sources in a majority of the development. The burden of designation of such structures or features as significant shall be upon the applicant, unless such structures or features are already identified as worthy of preservation in the comprehensive plan, parks plan, or other official documents, or on a local, state, or national register. Final determination as to significance shall be made by the planning director at the earliest possible time and no later than the preapplication review. The planning department staff report shall include a recommendation to the hearing examiner on any suggested density increase for these design features. The hearing examiner recommendation shall also include findings and a recommendation regarding these density increases.

d. The total possible design and landscape bonuses available under this subsection shall not exceed 15 percent.

2. Density Increase for Affordable Housing. A maximum density increase of 15 percent for the development of on-site and/or off-site housing opportunities for low- or moderate-income families is permitted based on the following standards:

a. For each low- or moderate-income housing unit provided under this section, one additional building lot or dwelling unit shall be permitted up to a maximum of 15 percent increase in total dwelling units.

b. Any off-site affordable housing units used to increase density shall be approved in conjunction with the preliminary PUD for which a density bonus is granted. The hearing examiner and the city council may impose development standards, construction schedules, and PUD approval conditions on the off-site development to ensure the off-site development meets the requirements for PUD approvals generally in this chapter, and to ensure appropriate timing of construction of the affordable units.

c. Any redevelopment of off-site affordable housing units involving rehabilitation of new or combination units may be used to increase the density by an additional five percent; provided, the redevelopment project shall be approved in conjunction with the PUD for which a density bonus is granted.

B. Residential Development Standards. The following criteria shall be applied by the city in reviewing and approving any requested variation from the residential development standards found in the underlying residential zoning district:

1. Building Spacing or Side and Rear Yards. The requirements for building spacing, or side and rear yards as they are often defined, is based on several related factors. Setback requirements within the PUD may be granted by the planning director if the proposed design incorporates the following features:

a. Privacy. The minimum side yard requirement is intended to provide privacy within the dwelling unit. Where windows are placed in only one of two side-facing walls, or there are no windows, or where the builder provides adequate screening for windows, or where the windows are at such a height or location to provide adequate privacy, the building side yard spacing may be reduced to a zero lot line; provided, a minimum of five feet is maintained between buildings and structures on the adjacent lot and appropriate ease-

ments are provided to maintain spacing and permit maintenance access. The minimum rear yard requirement is intended to provide privacy for the outdoor area behind the dwelling unit. Where physical elements such as fences, screens, or open space are provided, rear yards may be reduced to 10 feet.

b. Light and Air. The building spacing provides one method of ensuring that each room has adequate light and air. Building spacing may be reduced where there are no windows or very small window areas and where rooms have adequate provisions for light and air from another direction. The building spacing may be reduced to a zero lot line on side yards and 10 feet on rear yards; provided, a minimum of five feet is maintained between buildings and structures and fences on the adjacent lot and appropriate easements are provided to maintain spacing and permit maintenance access.

c. Side Yard Use. Areas between buildings are often used as service yards, for storage of trash, clotheslines, or other utilitarian purposes. Where this use is similar for both houses, a reduction of building space permitting effective design of a utility space shall be permitted. Kitchens and garages are suitable uses for rooms abutting such utility yards. In these areas reduction from 10 feet to five feet will be permitted.

d. Rear Yard Use. Areas behind buildings provide a usable yard area for residents and can be used for landscaping, recreation, storage, and other residential accessory uses. In areas where physical elements are provided for privacy, a reduction from 20 to 10 feet will be permitted.

e. Building Configuration. Typical setback requirements will be required unless the following can be demonstrated. Irregular building configurations may be allowed if the needs expressed in the subsections (B)(1)(a), (b), and (c) of this section are met.

f. Front Yard. The minimum front yard is intended to provide privacy and usable yard area for residents. In practice, however, front yards are rarely used, so that only the privacy factor is important. Where a developer provides privacy by reducing traffic flow through street layout such as cul-de-sacs, or by screening or planting, or by facing the structure toward open space or a pedestrian way, or through the room layout or location, and access to garages of the home face perpendicular to or are not visible from the street frontage, then it is possible to reduce the front yard setback to 15 feet. Also, if 60 percent of the front facing portion of a structure consists of a front porch, setbacks may

also be reduced to 10 feet for the front yard. Front porches and stoops which contain less than 60 percent of the front facade may project into the setback; provided, they do not interfere with minimum vehicular sight distance requirements.

2. Lot Size and Lot Coverage. The hearing examiner, for the purpose of promoting an integrated project that provides a variety of housing types and additional site amenities, may recommend reductions in the area of individual lots and increases in the lot coverage within a PUD from the required lot area and lot coverage for the zoning district; provided, any such modifications shall be compensated by open space areas elsewhere in the PUD. Open space shall not include areas designated as public or private streets.

3. Open space shall be governed by the requirements of SMC 16.10.140.

4. Streets. PUDs shall provide effective street and pedestrian networks. New developments shall also provide multiple access points to existing streets and plan for access to future adjacent developments.

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 the PUD provides for the separation of vehicular and pedestrian circulation patterns and provides for adequate off-street parking facilities.

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 devel-

opment without requiring all traffic to use arterials between neighborhoods.

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

5. Traffic Calming. Traffic calming control devices may be considered by the city engineer where appropriate to control excessive speed and volume of traffic on neighborhood streets. These devices may include, but are not limited to, traffic circles, streets narrowing, lane stripes, traffic control signing, chicanes, and curb bulbs.

6. Perimeter Buffer Zone.

a. There shall be a minimum 30-foot buffer zone in any PUD of multifamily or nonresidential buildings or structures that are adjacent to a LMD and MD residential use districts. No minimum buffer is required adjacent to other zoning districts, other than whatever perimeter buffer is deemed necessary to meet compatibility and impact criteria in earlier sections of this chapter.

b. The buffer zone must be kept free of buildings or structures and must be landscaped, screened or protected by natural features so that adverse effects on surrounding areas are minimized. The required buffer zone may be used as part of the open space acreage for the PUD as specified in SMC 16.10.140.

7. Nonresidential Uses in a Residential PUD.

a. In a residential PUD, nonresidential uses of a religious, cultural, recreational, and nonresidential character are allowed to the extent they are designed and intended primarily to serve the residents of the PUD.

b. In a residential PUD, no nonresidential use, nor any building devoted primarily to a nonresidential use, shall be built or established prior to the development of the residential buildings or uses in the residential PUD it is designed or intended to serve.

c. Yards. During the review process the reduction in or elimination of the required yards may be authorized, provided landscaped yards of at least such minimum width as required by the zoning district in which the PUD is located shall be maintained by the nonresidential use and shall be built or established prior to the development of the residential buildings or uses in the residential PUD it is designed or intended to serve.

d. For nonresidential uses in a residential PUD, it shall be the burden of the PUD applicant to demonstrate to the hearing examiner the scale of required nonresidential uses proposed to serve the

## 16.10.130

project and to provide a time frame for the construction of such uses as they relate to the existing and proposed residential development. (Ord. 793-02 § 1)

### 16.10.130 Reserved. (Ord. 793-02 § 1)

### 16.10.140 Open space requirements.

A. For the purpose of this chapter, open space shall be described as follows:

1. "Common open space" means a parcel or parcels of land or an area of water or a combination of land and water within the site designated for a PUD which is designed and intended for the use or enjoyment of the residents or owners of the development. Common open space may contain such complementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of the residents or owners of the development.

2. "Usable open space" means areas which have appropriate topography, soils, drainage, and size to be considered for development as active and passive recreation areas for all residents or users of the PUD. Detention areas may be considered under this category providing all the usable standards are met.

3. "Conservation open space" means areas containing special natural or physical amenities or environmentally sensitive features, the conservation of which would benefit surrounding properties or the community as a whole. Such areas may include, but are not limited to, stands of large trees, view corridors or view points, creeks and streams, wetlands and marshes, ponds and lakes, or areas of historical or archaeological importance. Conservation open space and usable open space may be, but are not always, mutually inclusive.

4. "Buffer open space" means areas which are primarily intended to provide separation between properties or between properties and streets. Buffer open space may, but does not always, contain usable open space or conservation open space.

5. "Severely constrained open space" means areas not included in any of the above categories which, due to physical characteristics, are impractical or unsafe for development. Such areas may include but are not limited to steep rock escarpments or areas of unstable soils.

B. All PUDs shall be required to provide open space in the amount of 20 percent of the gross land

area of the site, in the minimum types specified in subsection (C) of this section.

C. Any combination of open space types may be used to accomplish the total minimum area required to be reserved as follows:

#### Open Space Percent of Gross Category Land Area

1. Usable	15% minimum
2. Conservation	No maximum or minimum
3. Buffer	2% maximum
4. Constrained	2% maximum
5. Unusable detention areas	5% maximum

(Ord. 885-05 § 1; Ord. 853-04 §§ 1, 2, 3; Ord. 793-02 § 1)

### 16.10.150 Expiration of preliminary PUD.

A. For preliminary PUD approvals for which a master phasing plan has not also been approved pursuant to SMC 16.10.040, an applicant shall file an application for a final PUD approval with the city within 12 months from the date of preliminary PUD approval by the city council. This period shall automatically be tolled for any period of time during which a court appeal is pending.

B. The city council may authorize one additional 12-month extension for filing a final PUD application if the city council finds that such extension is consistent with the approval criteria required for each project and that no new information or change in circumstances justifies changing the city's previous preliminary PUD approval.

C. A phasing plan shall accompany the master plan, for developments where a general master plan for the entire project provides for the project to be constructed in phases. The phasing plan shall describe the general boundaries of each phase and the expected date at which a detailed site plan or subsequent preliminary and final PUD application for that phase of the development will be submitted; provided, however, no project to be developed in phases may exceed five years from the time the master plan is approved until the final phase is submitted. The city council, as a condition of preliminary PUD or master plan approval, may calculate the amount of time until completion and may also set a schedule for completion of the various phases; such time period may never exceed five years. The

Division V. Concurrency Management System

Chapter 16.108

CONCURRENCY MANAGEMENT SYSTEM

Sections:

- 16.108.010 Purpose.
- 16.108.020 Exemptions.
- 16.108.030 Applications.
- 16.108.040 Nonbinding determinations.
- 16.108.050 Certificate of concurrency.
- 16.108.060 Standards for concurrency.
- 16.108.070 Facilities and services subject to concurrency.
- 16.108.080 Concurrency determination – Arterial roadways.
- 16.108.090 Concurrency determination – All other roadways.
- 16.108.100 Concurrency determination – Potable water.
- 16.108.110 Concurrency determination – Wastewater.
- 16.108.120 Concurrency determination – Police protection.
- 16.108.130 Concurrency determination – Parks and recreation.
- 16.108.140 Fees.

16.108.010 Purpose.

The purpose and intent of this chapter of the unified development code is to provide a regulatory mechanism to ensure that a property owner meets the concurrency provisions of the comprehensive plan for development purposes as required in RCW 36.70A.070. This regulatory mechanism will ensure that adequate public facilities at acceptable levels of service are available to support the development's impact. (Ord. 630 § 2[16.12.010], 1995)

16.108.020 Exemptions.

Any development categorically exempt from threshold determination and EIS requirements as stated in the State Environmental Policy Act (SEPA), Chapter 197-11 WAC. (Ord. 630 § 2 [16.12.020], 1995)

16.108.030 Applications.

A. Each applicant for a development approval, except those exempted from concurrency, shall apply for a certificate of concurrency.

B. An applicant requesting development approval by the city shall provide all information

required by the city in order for a binding concurrency evaluation to be made on the proposed project. Such required information shall include any information required by the building and zoning official in order to evaluate issuance of certificate of concurrency.

C. No development approvals will be granted unless the applicant is eligible for a certificate of concurrency. (Ord. 630 § 2[16.12.030], 1995)

16.108.040 Nonbinding determinations.

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

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

C. A nonbinding concurrency determination may be received prior to a request for development action or approval by submitting a request and any applicable fee to the building and zoning official. Information required to make this determination is the same as that cited in SMC 16.108.030(B). (Ord. 630 § 2[16.12.040], 1995)

16.108.050 Certificate of concurrency.

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

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

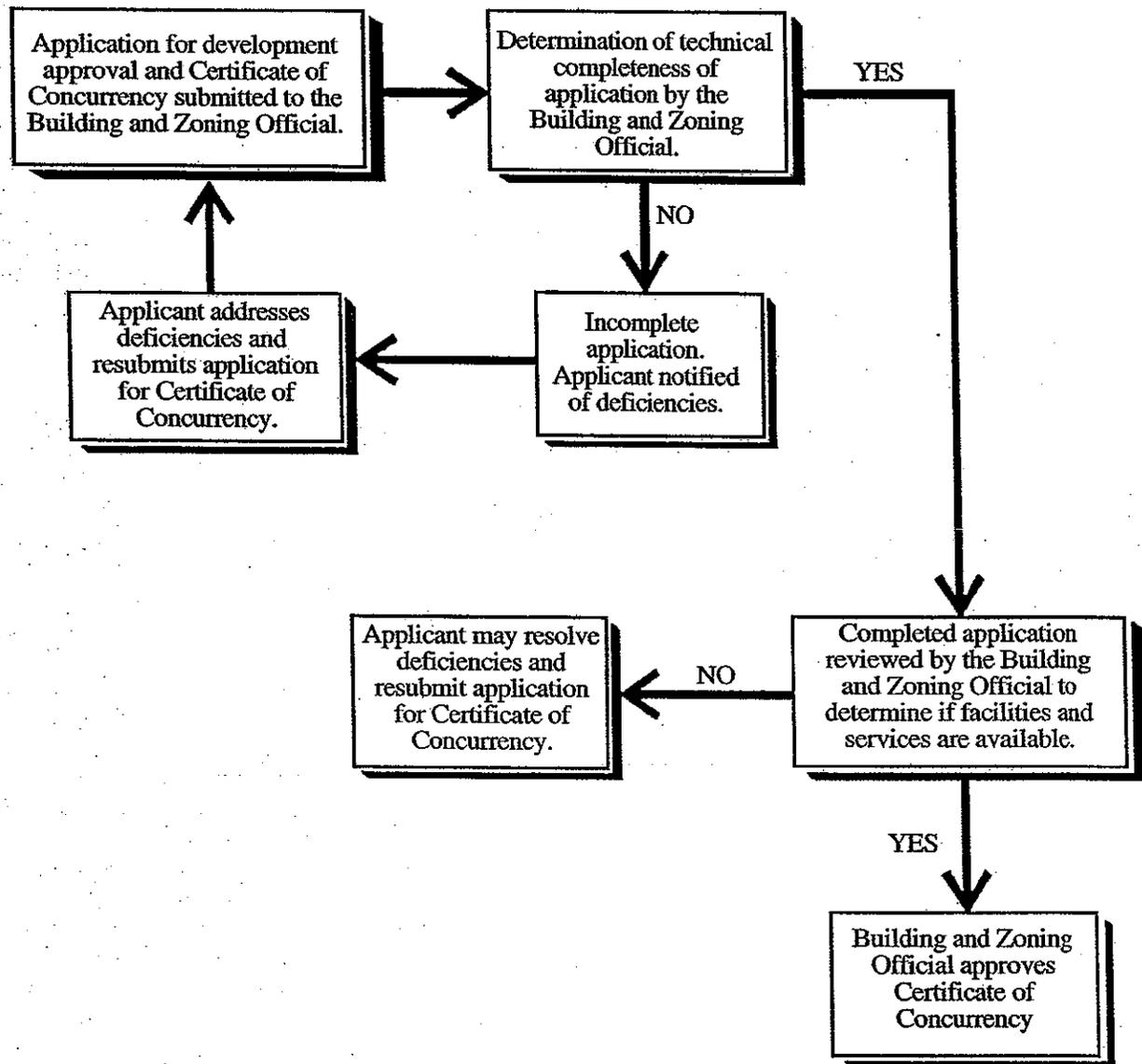
C. A certificate of concurrency may be extended to remain in effect for the life of each subsequent development approval for the same parcel, as long as the applicant obtains a subsequent devel-

opment approval prior to the expiration of the earlier development approval.

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

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

**City of Sultan  
Concurrency Review Process**  
Request for Development Approval Certificate of Concurrency (Binding)



(Ord. 630 § 2[16.12.050], 1995)

6.1

**16.108.060 Standards for concurrency.**

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

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

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

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

**16.108.070 Facilities and services subject to concurrency.**

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

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

**16.108.080 Concurrency determination – Arterial roadways.**

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

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

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

Washington State Department of Transportation (WSDOT).

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

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

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

**16.108.090 Concurrency determination – All other roadways.**

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

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

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

6.2

demand (K ratio) and percentage of trucks (T factor), in the traffic stream;

5. Physical features of the road network involved, with regard to functional classification, capacity, safety and operations;

6. A level of service analysis of the road system that can reasonably be expected to bear traffic generated by the development:

a. The level of service may generally assume conditions for two-lane highways without access control and at-grade intersections as defined in the highway capacity manual;

b. Level of service and volume to capacity ratio ( $v/c$ ) is to be determined and indicated within the report, showing factors used and methodology;

c. Volume figures used shall consist of:  
i. Current average daily traffic (ADT),  
ii. Projected ADT at completion of proposal,

iii. Growth projection if completion is more than two years away;

7. The staged increase in traffic volumes on all transportation routes to be caused by the development as different phases are completed;

8. Traffic volumes shall be projected for 10 years into the future and, if a future phase of the development will extend beyond 10 years, to the time of completion of future phases of the development;

9. Other similar data that may be required to provide a complete and thorough analysis.

B. The city may also require that the traffic study include other information necessary for a thorough review of the immediate and long-range effects of the proposed development on the transportation system. (Ord. 630 § 2[16.12.090], 1995)

#### **16.108.100 Concurrency determination – Potable water.**

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

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

C. If the LOS information indicates that the proposed project would result in a LOS failure, the concurrency determination would be that adequate

facility capacity at acceptable levels of service was not available at the date of application or inquiry. (Ord. 630 § 2[16.12.100], 1995)

#### **16.108.110 Concurrency determination – Wastewater.**

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

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

C. If the LOS information indicates that the proposed project would result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable levels of service was not available at the date of application or inquiry. (Ord. 630 § 2[16.12.110], 1995)

#### **16.108.120 Concurrency determination – Police protection.**

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

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

C. If the LOS information indicates that the proposed project would result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable levels of service was not available at the date of application or inquiry. (Ord. 630 § 2[16.12.120], 1995)

#### **16.108.130 Concurrency determination – Parks and recreation.**

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

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

C. If the LOS information indicates that the proposed project would result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable levels of service was not available at the date of application or inquiry. (Ord. 630 § 2[16.12.130], 1995)

**16.108.140 Fees.**

A. The city shall charge a processing fee to any individual that requests a nonbinding concurrency determination not associated with an application for development approval or development action. The processing fee shall be nonrefundable and nonassignable to any other fees. Such fee shall be determined by resolution of the city council at a date subsequent to the effective date of this unified development code.

B. The following types of development shall be exempt from paying the concurrency determination fee:

1. Nonprofit agencies whose primary chartered purpose is to provide affordable housing; and
2. Other governmental agencies. (Ord. 630 § 2[16.12.140], 1995)

**Chapter 16.112**

**DEVELOPMENT IMPACT FEES**

Sections:

- 16.112.010 Purpose.
- 16.112.020 Imposition of impact fees.
- 16.112.030 Recreation facility impact fee formula.
- 16.112.040 Traffic impact fee formula.
- 16.112.050 Calculation of impact fee.
- 16.112.060 Collection of impact fees.
- 16.112.070 Impact fee exemptions.
- 16.112.080 Impact fee credits.
- 16.112.090 Appeals.
- 16.112.100 Impact fee fund.
- 16.112.110 Expenditures.
- 16.112.120 Refunds.
- 16.112.130 Impact fee as additional and supplemental requirement.

**16.112.010 Purpose.**

This chapter of the unified development code is enacted pursuant to the Washington State Growth Management Act [Chapter 17 Law of 1990, 1st Executive Session, Chapter 36.70A of the Revised Code of Washington (RCW) et sequitur and Chapter 32 Laws of 1991, 1st Special Session, RCW 82.02.050 et sequitur, as not in existence of hereafter.]

It is the purpose of this chapter to:

- A. Ensure that adequate facilities are available to serve new growth and development;
- B. Promote orderly growth and development by requiring that new development pay a proportionate share of the cost of new facilities needed to serve growth; and
- C. Ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicate fees for the same impact. (Ord. 630 § 2[16.13.010], 1995)

**16.112.020 Imposition of impact fees.**

A. After the effective date of this code, any person who seeks to develop land within the city of Sultan by applying for a building permit for a residential building or manufactured home installation, shall be obligated to pay an impact fee in the manner and amount set forth in this chapter.

B. The fee shall be determined and paid to the designated city of Sultan official at the time of issuance of a building permit for the development. For

*Note: Accepts recommendation of hearing examiner, accepts hearing examiner findings of fact and conclusions of law, makes policy determination as recommended by hearing examiner, denies appeal, and denies application for PUD plat approval and remands to hearing examiner and applicant to modify application .*

**CITY OF SULTAN  
Sultan, Washington**

**RESOLUTION NO. 08-05.**

**A RESOLUTION OF THE CITY OF SULTAN  
ACCEPTING THE HEARING EXAMINER'S  
FINDINGS OF FACT, CONCLUSIONS OF LAW,  
POLICY RECOMMENDATIONS AND  
RECOMMENDATION TO DENY PLANNED UNIT  
DEVELOPMENT APPROVAL AND REMANDING  
TO APPLICANT TO MAKE MODIFICATIONS  
REGARDING FREED LLC'S PLANNED UNIT  
DEVELOPMENT AND SUBDIVISION  
APPLICATION FOR A 16 LOT PLANNED UNIT  
DEVELOPMENT (CALEB COURT)**

**WHEREAS** Freed LLC on October 27, 2006 filed an application for approval of Caleb Court, a 16-lot Planned Unit Development (PUD) subdivision for single family development;

**WHEREAS** an open record hearing occurred before the City's Hearing Examiner on November 1, 2007 on the application, the City Hearing Examiner issued a Recommendation dated November 13, 2007, and the applicant Freed LLC appealed the Recommendation and requested a closed record hearing by appeal received on November 26, 2007;

**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, Conclusions of Law, policy recommendations concerning road widths and modification thereof, street design and the cul-de-sac, and concurrency as to police level of service;

**NOW, THEREFORE, it is resolved by the City Council of the City of Sultan as follows:**

- A. The City Council accepts the Hearing Examiner's Findings of Fact, Conclusions of Law, policy recommendations as to code interpretations as set out in the Hearing Examiner's Recommendation dated November 13, 2007 and denies the Planned Unit Development and remands the subdivision application back to the applicant for modification.
- B. The appeal of Freed LLC received November 26, 2007 is denied.

**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

By \_\_\_\_\_  
Council Member Flower

By \_\_\_\_\_  
Council Member Champeaux

By \_\_\_\_\_  
Council Member Blair

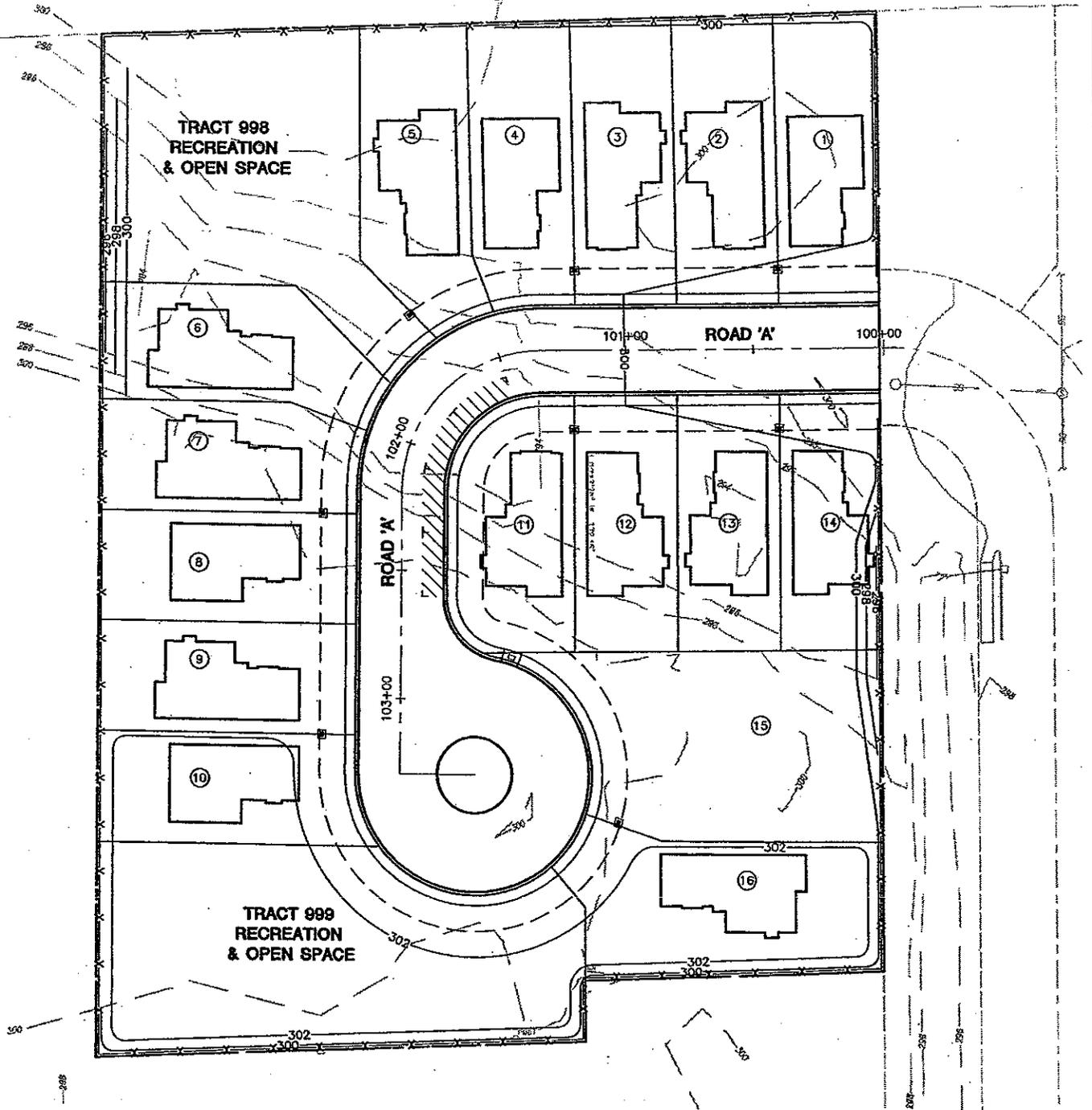
By \_\_\_\_\_  
Council Member Slawson

By \_\_\_\_\_  
Council Member \_\_\_\_\_

By \_\_\_\_\_  
Council Member \_\_\_\_\_

By \_\_\_\_\_  
Council Member Wiediger

Oct 02, 2007 4:48PM Last Saved By: Nicholas James



**DEVELOPED HYDROLOGIC CONDITIONS**

IMPERVIOUS LOT AREA = (ASSUME 3,000 S.F. PER LOT)	1.10 AC.
ROADWAY SURFACE AREA = (MODELLED AS IMPERVIOUS)	0.47 AC.
LANDSCAPE/LAWN AREA =	1.14 AC.
TOTAL SITE AREA =	2.71 AC.

**RECEIVED**  
OCT - 4 2007

BY: .....

*Attachment 8*

**KJM**  
Design  
**JDZ**  
Drawn  
**10/19/2006**  
Date  
**180-004-06**  
Project No.



Site Development Associates, LLC  
10117 Main Street, Bothell, Washington 98011  
Office: 425.486.6533 Fax: 425.486.6593 www.sdaengineers.com

**CALEB COURT**

**PROPOSED SITE  
CONDITIONS**

NTS  
Scale

3  
Figure No.