

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NUMBER: A - 1

DATE: March 13, 2008

SUBJECT: Resolution No. 08-03 – Rejecting the Hearing Examiner’s Recommendation, accepting the Hearing Examiner’s Findings of Fact and some Conclusions of Law, making additional Conclusions of Law, and accepting the Sultan 144, LLC Greens Estates Planned Unit Development and Subdivision Application for a 63-lot Planned Unit Development.

CONTACT PERSON: Erin Martindale, Perteet Inc.

ISSUE:

The issue before the City Council is to authorize the Mayor to sign Resolution No. 08-03 rejecting the Hearing Examiner’s recommendation and approving the Sultan 144 LLC Planned Unit Development, subject to conditions approval.

STAFF RECOMMENDATION:

Authorize the Mayor to sign Resolution No. 08-03 rejecting the Hearing Examiner’s Recommendation, accepting the Hearing Examiner’s Findings of Fact and some Conclusions of Law, making additional Conclusions of Law, and accepting the Sultan 144, LLC Greens Estates Planned Unit Development and Subdivision Application for a 63-lot Planned Unit Development.

SUMMARY:

The City Council conducted a Closed Record Hearing and Public Appeal Meeting to consider the Hearing Examiner’s Recommendation dated September 19, 2007 for the Greens Estates Preliminary Planned Unit Development Subdivision and the Appeal from Sultan 144 LLC in accordance with SMC 2.26.150(C), (D), (E), and (F).

At the conclusion of the Closed Record and Public Appeal Hearing, the City Council considered two alternative resolutions:

- a. Resolution Number 08-03A, which accepted the Recommendation of the Hearing Examiner denying the PUD Application and returning the Preliminary Subdivision Application to the Applicant for modification; or
- b. Resolution 08-03B, which rejected the Recommendation of the Hearing Examiner, accepted the Hearing Examiner’s finding of fact, some conclusions of law, making other differing conclusions of law, and granting approval of the Application subject to the Hearing Examiners revised conditions of approval

After considering the record, the City Council rejected the Recommendation of the Hearing Examiner dated September 19, 2007, accepting the Hearing Examiner's Findings of Fact and some Conclusions of Law, and making additional Conclusions of Law. The City Council decided to approve the Greens Estates Planned Unit Development subject to the conditions the Hearing Examiner recommended, as revised in the attached resolution (and discussed below).

The City Council directed staff to prepare a new resolution (Resolution No. 08-03) to set forth its conclusions as follows:

Note: bolded sections are specific conditions that were not specifically discussed at the February 28, 2008 Council meeting.

1. PUD Location Criteria – The Council finds that the Greens Estates PUD meets the location criteria in SMC 16.10.110(B)(2), specifically section (d), which requires that transit is available in sufficient proximity to the site to facilitate transit access to the PUD-SF.

Greens Estates PUD meets the locational criteria by:

- Providing a bus transit pull out along Sultan Basin Road for future transit service
- Having vehicular access to an existing transit stop
- By providing required transit and school bus stops as required under SMC 16.10.120(B)(4)(c)(i)

The Council finds that as long as the requirements of SMC 16.10.120(B)(4)(c)(i) are met and the project facilities any future transit access by provision of facilities, then the location criteria in SMC 16.10.110(B)(2)(d) for transit facilities has been met.

2. Panhandle "flare outs" – The Council finds that the proposed panhandle configuration meets the requirements of SMC 16.150.010 (3) which states that "a lot shall abut by no less than 20 feet upon and have direct access to: (A) an opened, constructed and maintained public road; or (B) a private road in plat or short plat approved by the city of Sultan; or (C) an exclusive, unshared, unobstructed permanent access easement at least 20 feet wide".
3. Public Right of Way Width – The Council finds that Greens Estates meets the criteria for reduced right-of-way width. SMC 16.10.120(B)(4)(b) states "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 Council finds that Greens Estates meets the requirements for reduced right-of-way through the following:

- Separation of vehicular and pedestrian circulation patterns is achieved by providing a pedestrian trail system that is separated from the vehicular street network.
- Sidewalks are separated from moving vehicles by planter strips and in some areas, on-street parking.
- Adequate off-street parking will be provided by requiring, under Condition 34 requiring four parking spaces on each lot.

Condition 12 in the resolution approves Roads A-E with fifty foot rights-of-way by placing required sidewalks within public access easements on private property. Roads D and F are approved to have fifty feet of rights-of-way with the elimination of one parking lane.

The Council also found that the sidewalks in public access easements on private property required additional driveway lengths. Condition 5(d) requires twenty foot setbacks for any garages, measured from the back of the constructed sidewalk. The front of the houses will be able to have twenty foot setbacks measured from the property line, with fifteen foot setbacks for porches measured from the property line.

Note: The condition also requires “No Parking” signs to be installed where no on-street parking is permitted. These signs were not discussed at the previous Council meeting.

Note: New Condition 34 also requires minimum dimensional requirements of 8.5 feet by 18 feet, as is required in the City’s off-street parking standards. The dimensional requirements were not previously discussed at the February 28, 2008 Council meeting.

4. PSE Easement – The Council finds that Greens Estates satisfies the recommendation of the Hearing Examiner that location of a previously undefined Puget Sound Energy (PSE) aerial transmission easement be defined prior to Council approval. A Use Agreement and accompanying letter dated December 12, 2007 with a follow up email on February 13, 2008 approve the configuration of the Greens Estates, including the location and use of recreational areas within the easement.

The Council also finds that the submitted Use Agreement between Puget Sound Energy requires additional conditions be placed on the application in order to comply with PSE requirements.

Note: New Conditions 5(f), 5(g), 5(h), and 33 on the Resolution include the specific language recommended by PSE. This language was not previously

discussed at the February 28, 2008 Council meeting. The conditions match those within the PSE December 12, 2007 approval letter and the Use Agreement.

5. Concurrency Standard for Police Service - The Council concurs with the Examiner's finding that the Staff erred in concluding that the application meets the concurrency standard for police services. The Examiner found that a Police Services Agreement to pay fees to meet police concurrency standards does not meet the requirements of Chapter 16.108 SMC.

The Examiner did find that conditions could be added to require that concurrency requirements be met prior to final plat approval or building permit issuance. The Council will require that the development meet the City's Police Concurrency requirement in effect at the time of first occupancy of units in Greens Estates.

BACKGROUND:

The Hearing Examiner recommended denial of the Planned Unit Development and returning for modification of the Preliminary Subdivision, based on one (1) issue of noncompliance. The Hearing Examiner recommendation included revised conditions of approval in case the Council did not concur with the reasons for denial of the Planned Unit Development.

The Hearing Examiner raised the following issues of noncompliance:

1. The Greens Estates Preliminary Subdivision and PUD cannot meet the requirement under SMC 16.10.110(B)(2)(d) that transit is available in sufficient proximity to the site to facilitate transit access to the PUD-SF.

In addition, the Hearing Examiner raised other issues for discussion by the Council that were not reasons to deny the application. They included:

1. The Greens Estates Preliminary Subdivision and PUD has a total of twelve (12) lots that use panhandles which flare out. They have street frontage of twenty (20) feet, as required by SMC 16.150.010(3), and then decrease the width of the panhandle to fifteen (15) feet for the remainder of the panhandle portion of the lots.
2. The Greens Estates Preliminary Subdivision and PUD reduced the total right-of-way width by including five (5) foot sidewalks easements on both sides of the roadway on private property. A PUD allows approval of reduced right-of-way width where separation of vehicular and pedestrian traffic is proposed and where adequate off-street parking is provided [SMC 16.10.120(B)(4)(b)]. Here, the right-of-way width reduction is not coupled with separation of vehicular and pedestrian traffic or off-street parking areas. While the street section meets the City's Design Standards, the right-of-way is reduced by placing the required

sidewalks in easements on each side of the street on private property, which is not one of the provisions in the Code for allowing reduced right-of-way.

3. The Greens Estates Preliminary Subdivision and PUD property includes an undefined Puget Sound Energy (PSE) aerial transmission easement. The Hearing Examiner recommended that the location of this easement be defined and the uses of the easement be approved by PSE prior to Council approval.

The Greens Estates Preliminary Subdivision and PUD does not meet the requirements for police concurrency under the City's concurrency management system in SMC 16.108. The Hearing Examiner recommends a condition be placed on the project that requires that the Police LOS be met prior to occupancy of the units of this development. The Applicant has agreed to this condition.

ALTERNATIVES:

1. Authorize the Mayor to sign Resolution No. 08-03 rejecting the Hearing Examiner's recommendation and approving the Sultan 144 LLC Planned Unit Development, subject to conditions approval.

This action indicates the City Council accepts the revised conditions of approval as outlines in Resolution No. 08-03 and is prepared to approve the PUD.

2. Do not authorize the Mayor to sign Resolution No. 08-03 rejecting the Hearing Examiner's recommendation and approving the Sultan 144 LLC Planned Unit Development, subject to conditions approval. Direct staff to areas of concern.

This action indicates the City Council has questions or concerns regarding the revised conditions of approval and may want to make changes to the conditions before final approval.

RECOMMENDED ACTION:

I MOVE TO AUTHORIZE THE MAYOR TO SIGN RESOLUTION NO. 08-03 REJECTING THE HEARING EXAMINER'S RECOMMENDATION, ACCEPTING THE HEARING EXAMINER'S FINDINGS OF FACT AND SOME CONCLUSIONS OF LAW, MAKING ADDITIONAL CONCLUSIONS OF LAW, AND ACCEPTING THE SULTAN 144, LLC GREENS ESTATES PLANNED UNIT DEVELOPMENT AND SUBDIVISION APPLICATION FOR A 63-LOT PLANNED UNIT DEVELOPMENT.

ATTACHMENTS

Attachment 1 – Resolution 08-03

Attachment 2 - Vicinity and Plat Map

ATTACHMENT 1

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

CITY OF SULTAN

Sultan, Washington

RESOLUTION NO. 08-03

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

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

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

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

WHEREAS the application came before the City Council for a closed record hearing and appeal by the applicant on the "Recommendation" on February 28, 2008;

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

NOW, THEREFORE:

- A. The City Council rejects the Recommendation of the Hearing Examiner dated September 19, 2007.
- B. The City Council hereby accepts the Hearing Examiner's Findings of Fact.

C. The City Council hereby adopts the Hearing Examiner's Conclusions of Law 1, 3, 9, 12, 14-21, 23-32 and makes its own or revised Conclusions of Law as follows:

Revised Conclusion of Law 2: "In summary, the Conclusions which follow demonstrate that Greens Estates meets all ~~but one~~ of the PUD approval criteria, meets preliminary subdivision approval criteria, and could be conditioned to comply with the requirements of Chapter 16.108 SMC, Concurrency. None of the other challenges raised by citizen participants reveal any defects requiring denial of the application. The revised condition list, with minor changes and additions, is justified and would serve the public use and interest."

Substitute Conclusions of Law 4-7: SMC 16.10.110(B)(2)(d) requires that "transit is available in sufficient proximity to the site to facilitate transit access to the PUD-SF". Greens Estates is about one mile from the nearest transit stop, a park-and-ride lot, and is generally situated similarly to Skoglund Estates, a PUD which this Council has approved. The site fronts and has direct access on Sultan Basin Road. As recorded in the Findings of Fact, the applicant proposes to provide a bus pullout at the southwest corner of the site along Sultan Basin Road.

The Council concludes that this provision of the code does not require that transit be available for pedestrians to access transit. Vehicular proximity must also be taken into account.

SMC 16.10.120(B)(4)(c)(i) requires "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...". This council concludes that for Greens Estates, with the provision of a bus turnaround on Sultan Basin Road, the PUD meets the residential development standards of SMC 16.10.120(B)(4)(c)(i).

This Council also concludes that as Greens Estates meets the requirements of SMC 16.10.120(B)(4)(c)(i), then the locational requirements in SMC 16.10.110(B)(2)(d) are also met.

Substitute Conclusion of Law 8: Under SMC 16.10.120(B)(4)(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."

Here, right-of-way width reduction is not coupled with reduced street sections or off-street parking areas, but rather is offset by a sidewalk easement on each side of the street. Greens Estates is proposing to construct standard width streets and sidewalks within rights-of-way which are too narrow to contain them (except on Roads D and F). The "left over" parts of the sidewalk are then placed within public access easements encumbering the front five feet of each frontage lot. On Roads D and F, a reduced right-of-way of fifty feet is coupled with the elimination of one parking lane. The sidewalks will be in the public right-of-way on these roads.

The Council concludes that the provision for allowing reduced right-of-way is met. This project provides a pedestrian trail system, providing separation of pedestrian and vehicular traffic patterns, the first criteria for reduced right-of-way. In addition, a project condition has been added that requires each lot in the development to provide four off-street parking spaces. With this condition, the project will meet the second criteria for reduced street right-of-way.

Revised Conclusion of Law 10: Greens Estates complies with adopted regulations. ~~with the sole exception of the PUD transit facilitation requirement, discussed above.~~

Substitute Conclusion of Law 11: SMC 16.150.010 (3) requires that “a lot shall abut by no less than 20 feet upon and have direct access to: (A) an opened, constructed and maintained public road; or (B) a private road in plat or short plat approved by the city of Sultan; or (C) an exclusive, unshared, unobstructed permanent access easement at least 20 feet wide”. In this application, the applicant has designed access panhandles for a number of lots that are 15 feet wide and that flare to 20 feet wide at the property line that abuts the street. The Council concludes that there is no requirement for the panhandle to maintain the twenty foot width for the entire length of the panhandle.

Revised Conclusion of Law 13: Greens Estates ~~would~~ meets the public use and interest. ~~if the above concerns could be resolved in the affirmative. However, given that the Examiner cannot recommend approval of the PUD, and given that the plat depends upon approval of the PUD, the proposed preliminary subdivision cannot be approved. Outright denial would be inappropriate as a standard plat could be designed for the site. Therefore, the Examiner will recommend that the application be returned for modification as allowed by SMC 16.28.290(A).~~

Revised Conclusion of Law 22: DCD erred in concluding that *Hammer PUD Greens Estates* meets the concurrency standard for police services. The police staffing statements contained within DCD’s Certificate are factually incorrect and were incorrect when the Certificate was issued on August 27th.

New Conclusion of Law 33: The Council concludes that with the PSE letter and Use Agreement dated December 12, 2007 and the follow up email from PSE dated February 12, 2008, Greens Estates satisfies the requirements of the Hearing Examiner’s recommendation that the location of the aerial transmission easement be defined prior to Council approval. The Use Agreement recommends two conditions be placed on the plat; the Council concludes that these conditions are necessary for the public health, welfare and safety.

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

Revised Condition 5(d): Garages whose vehicular door(s) face a street with reduced right-of-way and a sidewalk easement must maintain a ~~18~~ 20 foot setback between the back edge of the constructed sidewalk and the near face of the garage.

New Condition 5(f): Transmission or distribution lines have been or will be constructed, operated, and maintained within the Puget Sound Energy (PSE) easement area, shown on the plat map. At no time shall PSE’s existing transmission line easement be used for storage of flammable or volatile material or placement of any buildings or other structures, including but not limited to the following: decks, patios, septic drainfields, and

outbuildings of any nature. At no time shall PSE's access to the transmission lines or structures along the easement area be permanently blocked off or unduly restricted.

New Condition 5(g): PSE's facilities may require tree and brush cutting within and adjacent to the easement right-of-way. PSE retains the right to cut, remove, and dispose of any and all brush, trees, and other vegetation upon the easement area. PSE shall also have the right to control, on a continuing basis and by any prudent and reasonable means, the establishment and growth of bushes, trees and other vegetation upon the easement areas which, in the opinion of PSE, interfere with the exercise of PSE rights or create a hazard to PSE systems. PSE shall, prior to the exercise of such rights, identify such trees and make a reasonable effort to give prior notice that such trees will be cut, trimmed, removed or disposed of (except that PSE shall have no obligation to identify such trees or give such prior notice when trees are cut, trimmed, removed or otherwise disposed of in response to emergency conditions). Owners shall be entitled to no compensation for trees cut, trimmed, removed or disposed of, except for the actual market value of merchantable timber (if any) cut and removed from the property by PSE. All shrubs and trees to be situated in the easement area must be of low-growing varieties that normally do not exceed 15 feet in height at maturity.

New Condition 5(h): The developer or future lot owners must pay for any and all costs associated with changes in vertical line clearance, re-stabilization of any electrical structure or anchor, or facilities access as a result of uses that do not comply with PSE conditions or restrictions outlined herein.

Revised Condition 12: Roads A, B, C, and E will provide the standard City of Sultan road section within a reduced right-of-way (50 feet instead of 60 feet) and will place the required sidewalks within easements on private property. All sidewalk easements on private property shall allow for public access. Roads D and F, as shown on the preliminary plans, are permitted to deviate from the design standards. Roads D and F have a reduced right-of-way width (50 feet instead of 60 feet) and have eliminated one (1) parking lane. Sidewalks will be within the right-of-way for Roads D and F. "No parking" signs shall be installed where no on-street parking is allowed.

New Condition 33: The project shall comply with the Consent for Use of Puget Sound Energy, Inc. Transmission Line Easement executed by Sultan 144, LLC on December 13, 2007, and the Consent shall be recorded prior to approval of the final plat. Final civil drawings shall demonstrate compliance with the Use Agreement, the December 12, 2007 letter from PSE, and the February 13, 2008 email from PSE.

New Condition 34: Each lot shall provide four off-street parking spaces. Up to two spaces may be within an enclosed garage. These spaces shall be a minimum of eight and one-half feet wide and eighteen feet long.

E. The Greens Estates Planned Unit Development is hereby approved for a 63-lot planned unit development and subdivision subject to the conditions as reviewed and revised by the

hearing examiner and as further revised by Substitute Conclusions of Law 2, 4, 5, 6, 7, 8, 10, 11, 13, and 22; new Conclusion of Law 33; and paragraph D above.

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

CITY OF SULTAN

Carolyn Eslick, Mayor

Attest:

By _____
Laura Koenig, City Clerk

Approved to Form:

By _____
Kathy Hardy, City Attorney

Effective Date: 5 days after publishing in official newspaper

Attachment 2

