

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: Consent C 2
DATE: March 13, 2008
SUBJECT: Council Minutes

CONTACT PERSON: Laura Koenig, Clerk/Deputy Finance Director

SUMMARY:

Attached are the minutes of the February 28, 2008 Closed Record Hearing on the Greens Planned Unit Development as on file in the office of the City Clerk.

RECOMMENDED ACTION:

Approve as submitted

MOTION:

Move to accept the consent agenda as presented.

COUNCIL ACTION:

DATE:

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PUBLIC HEARINGS:

The Closed Record hearing on the Greens PUD was called to order by Mayor Eslick.

Councilmembers present: Champeaux, Davenport-Smith, Flower, and Blair.

There were no objections to the Council participation. It was disclosed that an e-mail was sent to the Council from Judy Heydrick regarding the project.

Staff: Erin Martindale, Perteet Engineering, provided the staff report. Provided a brief description of the project. The issue before the City Council is to conduct a Closed Record Hearing and Public Appeal Meeting to consider the Hearing Examiner's Recommendation dated September 19, 2007 for the Greens Estate Preliminary Planned Unit Development Subdivision and the Appeal from Sultan 144, LLC in accordance with SMC 2.26.150(C), (D), (E), and (F).

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

The Hearing Examiner also raised four (4) other issues that should be discussed by Council, but were not reasons to deny the application. The following issues were raised by the Hearing Examiner:

1. The Greens Estates Preliminary Subdivision and PUD cannot meet the requirement under SMC 16.10.110(B)(2)(d) that "transit is available in sufficient proximity to the site to facilitate transit access to the PUD-SF". (Subject of the appeal)
2. The Greens Estates Preliminary Subdivision and PUD has a total of twelve (12) lots that use panhandles which flare out. They have street frontage of twenty (20) feet, as required by SMC 16.150.010(3), and then decrease the width of the panhandle to fifteen (15) feet for the remainder of the panhandle portion of the lots. The Code does not have a provision to allow or prohibit this.
3. The Greens Estates Preliminary Subdivision and PUD reduced the total right-of-way width by 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.
4. The Greens Estates Preliminary Subdivision and PUD property includes an undefined Puget Sound Energy (PSE) aerial transmission easement. The Hearing Examiner recommended that the location of this easement be defined and the uses of the easement be approved by PSE prior to Council approval. PSE has submitted a letter and a follow up email to the Applicants outlining the restrictions on use of the easement.
5. The Greens Estates Preliminary Subdivision and PUD does not meet the requirements for police concurrency under the City's concurrency management system in SMC 16.108. 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.

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The Hearing Examiner conducted an Open Record Hearing on September 11, 2007 for the Greens Estate Preliminary Subdivision and Planned Unit Development located south of 132nd Street S.E. and east of Sultan Basin Road. The Hearing Examiner's Report and Recommendation, dated September 19, 2007, DENIED the Planned Unit Development; RETURN Preliminary Subdivision for Modification.

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

The Hearing Examiner Recommends that the application for a Planned Unit Development be denied because it does not meet the locational criterion in SMC 16.10.110(B)(2)(d) which states that "transit is available in sufficient proximity to the site to facilitate transit access to the PUD-SF". The Hearing Examiners interpretation of the language of the locational criteria in SMC 16.10.110(B) is that transit must be no more than three-fifths (3/5) of a mile from a transit stop, *and* have pedestrian access between the development and that stop, in order to meet the criteria, which requires that transit be available to the site in sufficient proximity to facilitate transit access, not that the site be designed to facilitate transit access. This minimum access requirement was outlined by the Hearing Examiner in the Vodnick Lane PUD project. While the Greens Estate project mostly has pedestrian access between the property and a bus stop, it is approximately one mile from the nearest stop, which exceeds the threshold that the Hearing Examiner has laid out. The Hearing Examiner recognizes that Council has previously overruled his interpretation of that provision in the Code, most pertinently with Skoglund Estates, which is directly adjacent to this property and has the same distance to transit

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

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

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

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

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

Panhandle widths

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

Most people, rightly or wrongly, expect their property lines to be straight-line segments. Since the driveways in these panhandles will likely not be flared to match the property lines, abutting owners may well believe that their property lines run straight to the street. Property line disputes could result and/or the panhandles could end up to be effectively only 15 feet wide all the way to the street.

The Sultan Municipal Code does require, in the definition of access, that all lots have a twenty (20) foot frontage to a public or private road at the street frontage. It does not allow or prohibit panhandle width from being reduced once it moves away from the street frontage.

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

A PUD allows approval of reduced right-of-way width where separation of vehicular and pedestrian traffic is proposed and where adequate off-street parking is provided [SMC 16.10.120(B)(4)(b)]. This means that in order to approve reduced right-of-way, the Applicant will have to show that moving vehicles and pedestrian traffic are separated by planter strips and parked cars, *and* that enough off-street parking is provided so that the loss of on-street parking is compensated for. Here, the right-of-way width reduction is not offset by separating vehicles and pedestrian beyond the minimum required, or by providing additional off-street parking areas.

While the street section meets the City's Design Standards, the right-of-way is reduced by placing the required sidewalks in 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 would mean much smaller distances between the homes and the sidewalk (i.e. small yards).

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

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1 – Off-Street Parking: The first is in regards to the lack of off-street parking provided. The off-street parking provided by the project meets the parking requirements in SMC 16.60.140, which requires two (2) parking spaces per single-family dwelling unit.

However, the provision in the PUD Code may require additional parking that would compensate for the loss of on-street parking be provided. It is likely that this project provides more than the minimum requirements. No analysis has been completed to determine if the requirement for adequate off-street parking has been provided.

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

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

The Applicant has expressed that they would agree to a twenty (20) foot setback for garages measured from the front property line. The setback for the front of the houses would remain at twenty (20) feet measured from the front property line.

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

The letter from PSE dated December 12, 2007, states that Puget Sound Energy intends to use this easement for a future transmission line corridor. Within this easement, the roads, and street trees no taller than fifteen (15) feet in height will be allowed. Street lights and fire hydrants, as well as all structures, are prohibited. An email dated February 13, 2008 from PSE allows the recreation structures proposed by the Applicant to be installed within the easement, as long as they do not represent a present or future hazard to the operation of any facilities that would be placed in the easement.

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

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

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

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

No further action is requested of or by the Applicant. The Council should be aware that accepting this condition of approval on three applications (Hammer, Twin Rivers and Greens Estates), will further set the policy that this condition will be applied to all future applications that are subject to this Code provision.

Applicant:

Patrick Mullaney, Sultan 144 Representative. The applicant is agreeable to the 20 foot setbacks for the garage and also agree with the conditions of the PSE easement. The flag lots will have four parking spaces per unit.

The Hearing Examiner recommended denial based on the transit issue, however, there is no basis in the code for the Hearing Examiner's standard. It is based on his opinion on how far someone is willing to walk. The Council approved other PUD's that are one mile from park and ride and the Greens Plat does provide a bus turn out. In the Skoglund Plat the Council found that the transit conditions have been met and the same facts apply to Greens PUD.

Flag lots and easements on the sidewalks were approved for the Skoglund PUD. The larger lots were designed based on information provided by City staff. Open space and critical wetlands have been designated in the PUD. The street standard is 60 foot width and the SMC allows the City Engineer to reduce driveway widths. The PUD compliances with the code and configuration was approved by City Staff. They request the Council reject the Hearing Examiner's recommendation and approve the plat.

Staff:

Briefly discussed the set backs and driveway lengths. In response to public complaints that no public comments were allowed, Kathy Hardy, City Attorney, advised that comments are limited to staff and the applicant and any opponents of the project and there were none. There is one open and one closed record hearing.

On a motion by Councilmember Champeaux, seconded by Councilmember Flower, the public meeting was closed. All ayes.

Carolyn Eslick, Mayor

Laura J. Koenig, City Clerk