

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: Consent C 1

DATE: March 27, 2008

SUBJECT: Council Minutes

CONTACT PERSON: Laura Koenig, Clerk/Deputy Finance Director

SUMMARY:

Attached are the minutes of the March 13, 2008 Council meeting minutes as on file in the office of the City Clerk.

RECOMMENDED ACTION:

Approve as submitted

MOTION:

Move to accept the consent agenda as presented.

CITY OF SULTAN COUNCIL MEETING – March 13, 2008

The regular meeting of the Sultan City Council was called to order in the Sultan Community Center by Mayor Eslick. Councilmembers present: Champeaux, Wiediger, Flower, Davenport-Smith, Blair and Doornek. Absent: Slawson (arrived at 9:15 PM).

CHANGES/ADDITIONS TO THE AGENDA:

Consent: Add Excused absence of Councilmember Slawson

Add Authorization for the Mayor to Hire a Temporary Building Inspector

Executive Session: Potential litigation and personnel

Discussion: Add Transportation Benefit District

COMMENTS FROM THE PUBLIC:

Caroline Spott: In regard to the Civic Web, the cost is \$10,000 for first year and \$5,000 each year for renewal. They have more space on the current web site for less money. Civil Web is proprietary system and the data belongs to the company. Iron Goat has a content management system and they submitted a proposal to the City and were told there was no money available. Upset that a local business was not being given priority.

Kay George: Advised that she went to the City web site to search for Ordinance 981-08 and could not find it. It is a big step for the City to post meetings but she could not find any ordinances. She could not attend the stormwater utility meeting however she is still collecting signatures on a petition opposing the stormwater. Ordinance 981-08 shuts down development for an indefinite time and the City can't afford to shut down development.

Loretta Storm: The presentation on Civic Web looks like a fantastic tool for the City. Was glad to hear there was going to be a hearing on the moratorium but was not sure it was not held before the ordinance was introduced. There will be a Traffic Safety Corridor meeting on the March 25, 2008 and they will be looking for public input on Highway 2 projects. Advised the library annexation passed and thanked everyone who worked on the annexation.

Keith Arndt: Has spent some time lately at City Hall and the kids that were gathered were waiting for the bus. Thanked the Mayor and Police Chief for their work on cleaning up the area. Moratorium has been discussed and the City has laid out the legal strategy for the GMA boards however the City has the tools to continue a de facto moratorium. He tried to submit an application for a PUD and was told there were no sewer hookups for the project. The cost of the moratorium will out weigh the cost of the hearings board.

COUNCILMEMBERS COMMENTS:

Davenport-Smith: Did a ride along with the Police Chief and learned a lot about police work.

Flower: Was impressed with the Civic Web site, but would also like to see what the local business has to offer. Invited the public to a meeting on March 15, 2008 on the Shooting Range at Olney Creek.

Blair: Thanked everyone for their support for the vote on the library annexation. Would like to see a demo from the local business for the records management system they have since another company was allowed to give a presentation.

Doornek: Would like to give a fair opportunity to the current web provider to make a presentation on their product.

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Mayor Eslick: Did a ride along with the Police Chief and is impressed with the way the police are handling the kids and the adults that are causing problems. The kids hanging out on the corner do have an impact on economic development as people who see them are discouraged from wanting to move here or start a business. The City will continue to research ordinances and methods to deter the kids from hanging around. City Staff are working on a joint grant application with Gold Bar to do a business survey. This will be a federal grant of \$50,000 for a Retail Economic Development Strategy.

HEARINGS:

Ordinance 981-08 Land Use Moratorium:

The Public Hearing on Ordinance 981-08 to impose a Land Use Moratorium was called to order by Mayor Eslick. There were no objections to the Council participation.

Staff: Andy Lane, Special Council for the City.

The Central Puget Sound Growth Management Hearings Board (Board) considered Fallgatter V, Fallgatter VIII, and Fallgatter IX, and found the City of Sultan's Capital Facilities Plan (CFP) and Transportation Improvement Plan (TIP) noncompliant with the Growth Management Act (GMA) and invalid. The Board also found the City noncompliant with the GMA for failing to complete its review and update of development regulations required by RCW 36.70A.130(1)(b).

A determination of invalidity means that the TIP and CFP cannot be used to determine concurrency under the Growth Management Act. Since the City's development regulations (SMC 16.108.030) require that the City issue certificates of concurrency before certain developments such as PUDs and Subdivisions can be approved, the City has been in a de facto moratorium since the City received the Board's order in Fallgatter IX on September 6, 2007.

The difference between a moratorium and invalidity without moratorium is that under a moratorium, the City may not accept certain development applications as defined in the ordinance. Under invalidity without a moratorium, the City may accept applications and process those applications to the point where a certificate of concurrency is required for approval, but the City cannot approve those applications.

At a Compliance Hearing on February 7, 2008, the Board instructed the City to advise the Board if the City would consider the adoption of a moratorium to prevent vesting of development applications in the absence of a valid CFP.

Those applications that do not require a certificate of concurrency will not be impacted by the moratorium and there will be no impact to projects that have vested.

Discussion:

Discussion was held regarding the impact to smaller projects and vested projects, the potential for the GMA Board to invalidate the development regulations, length of the moratorium and the need to adopt a time line for completion of the compliance issues.

Public Input:

Keith Arndt: Asked how a moratorium differs from the de facto moratorium?

Andy Lane advised the difference is that without a moratorium the City can accept applications but would not be able to approve them and with the moratorium they would not be allowed to accept applications.

Kay George: Feels any type of moratorium is a like putting up a closed for business sign. The City has enough issues with wetlands and slopes already and this will discourage developers and make them go somewhere else.

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Peter Arkinson, representing the Hammer property: Provided a proposed revision to the ordinance for the Council to consider that would list those projects that have been approved and are vested. To say a moratorium will be put in place and only last six months is unrealistic as they have a tendency to be renewed. He represents the Hammer property and they have received preliminary plat approval and the engineering plans are under review. He feels they are vested but the ordinance is not clear as to which applications will not be accepted such as sewer and water connections. It does not help the City or people who want to open a business if it is not clear who can develop.

Bart Dalmasso Asked if the hearings board decision can be appealed. (Yes). Feels the City is being blackmailed by the Board and should shorten the moratorium if possible. Sales in Sultan have dropped considerably. Duvall put a moratorium on for two years for sewers and after it was lifted building boomed. He suggested the City look at 9 lot short plat provisions and that might be a solution for the city.

Jean Roberts: Supports the moratorium. It has taken years to get to this point and they have heard about the capital facility problems and how the City was not following the rules. They have had a lot of time to study and correct the problems and it is time do it right.

On a motion by Councilmember Flower, seconded by Councilmember Blair the public hearing was closed.

Executive Session: On a motion by Councilmember Flower, seconded by Councilmember Wiediger, the Council adjourned to executive session for twenty five minutes to discuss potential litigation and personnel. All ayes.

Staff:

Grants: Donna Murphy provided an update on the volunteer program and advised that people are calling to help with block watch and cleaning. The city has been advised that \$500,000 has been allocated by the State for the wastewater treatment plant project.

Police: Chief Hawkins advised that the Police are addressing the juvenile problems and are doing it through presence first and if that doesn't work, they will enforce ordinances. They are working with the School District to develop an emergency rapid responder program and to put a resource officer in the schools in September.

CONSENT AGENDA:

The following items are incorporated into the consent and approved by a single motion of the Council. On a motion by Councilmember Blair, seconded by Councilmember Weidiger, the consent agenda was approved as amended. Champeaux – aye; Wiediger – aye, abstained on the minutes; Davenport-Smith - aye; Flower – aye; Blair – aye; Doornek – aye, abstained on the minutes.

- 1) Approval of the minutes of the February 28, 2008 regular Council Meeting as on file in the Office of the City Clerk.
- 2) Approval of the minutes of the February 28, 2008 Greens PUD Closed Record Hearing as on file in the Office of the City Clerk.
- 3) Approval of the minutes of the January 24, 2008 Public Hearing and February 28, 2008 continued Public Hearing on the Stormwater Utility as on file in the Office of the City Clerk.

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- 4) Approval of vouchers in the amount of \$60,151.31 and payroll through February 22, 2008 in the amount of \$55,955.18 to be drawn and paid on the proper accounts.
- 5) Authorization for the Mayor to sign the extension of the Interagency Agreement with the Department of Licensing for the Master Business License contract.
- 6) Excused absence of Councilmember Slawson from the March 13, 2008 Council meeting.
- 7) Authorization for the Mayor to hire a temporary Building Inspector.

ACTION ITEMS:

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

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)

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 four parking spaces on each lot.
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 approving 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.
 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.

On a motion by Councilmember Champeaux, seconded by Councilmember Flower, the Mayor was authorized to sign Resolution 08-03 rejecting the Hearing Examiner's recommendation, accepting the Hearing Examiner's finding of fact and some conclusions of law and conditions, making additional conclusions of law and conditions and accepting the Sultan 144 LLC Greens Estates Planned Unit Development and Subdivision application for a 63 lot Planned Unit Development. All ayes.

Ordinance 981-08 Land Use Moratorium: The issue before the City Council is to authorize the Mayor to sign Ordinance No. 981-08 imposing a moratorium on the acceptance of and processing of applications for subdivisions under Sultan Municipal Code 16.28.250 through 16.28.390, and 16.28.470, planned unit developments under Sultan Municipal Code chapter 16.10, rezones under Sultan Municipal Code chapter 21.10; and annexations under any method. The City Council reviewed the Board's instructions to the City at its meeting on February 14, 2008 and directed staff to return with an adopting ordinance for consideration at its February 28, 2008 meeting. Discussion was held on the 400 building lots that have been approved and the fact that permits can be issued for those lots, impact on the development community, the impact the action will have on the Growth Management Board future decisions on compliance issues and the need to complete the Comprehensive Plan elements.

On a motion by Councilmember Blair, seconded by Councilmember Doornek, the Mayor was authorized to sign Ordinance 981-08 imposing a moratorium on the acceptance of and processing of applications for subdivisions under Sultan Municipal code 16.28.250 through 16.28.390 and 16.28.470 planned unit developments under Sultan Municipal code chapter 16.10, rezones under Sultan Municipal Code chapter 21.10 and annexations under any method. All ayes. except Councilmember Flower who voted nay.

Rabanco Connection Extension of Contract for Recycle:

In 2003 the City entered into a contract with Rabanco Connections dba as Lynnwood Disposal (now known as Allied Waste) to provide curbside recycling services and residential yard waste collection. A separate contract for roll off drop collection, compactor services and commercial recycling was also approved. These were five year contracts that will expire in April 2008. Staff has prepared an addendum to extend the current contract until December 31, 2008. Rabanco Connections has advised Staff that they are willing to extend the contract. SMC 13.20.030 requires competitive bidding for garbage collector franchise agreements. SMC 13.16.020 establishes mandatory recycling service for residents.

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At this time the only change to the contracts will be to Section 2, Term of the Agreement. There are issues that need to be addressed during the preparation of a request for proposals (RFP) and during contract negotiations. Staff is recommending an extension to give the City time to prepare the required RFP in the second half of 2008.

On a motion by Councilmember Doornek, seconded by Councilmember Wiediger, the Mayor was authorized to sign a 9 month Franchise extension with Rabanco Connections for residential and commercial recycling services. All ayes.

Skateboard Park Project: The issue before the City Council is to authorize the Mayor to sign the Third Amendment to the agreement with Capital Architects, approve the design prepared by Capital Architects and authorize staff to call for bids once the specifications are complete. The plans include phase I and II and staff recommends that they be combined.

On a motion by Councilmember Blair, seconded by Councilmember Doornek, the Mayor was authorized to sign a contract with Capital Architects and staff was directed to call for bids when the specifications are complete. All ayes.

DISCUSSION ITEMS:

Quasi-Judicial Hearing Procedures: The issue before the City Council is to review its procedures for quasi-judicial closed record hearings on preliminary plat applications, preliminary planned unit development (PUD) applications, variances, and conditional use permits. The closed record hearing is limited to those issues addressed in the open hearing. The Council has allowed public comment during the closed record hearing and in that process, new information has been introduced. This opens the City to a LUPA action by the applicant. The city is the only one in the state that allows comments in a closed record hearing, one other city allows comments from parties of records and all other cities allow no comments. Citizens were concerned that there was a change to the process and the public was not informed. Staff was directed to bring back the revised policy. The code will be amended to eliminate the appeal hearing.

Shoreline Master Plan: The City is finalizing the process to receive a decision letter from the Department of Ecology on the City's Shoreline Master Program.

The purposes of the Shoreline Master Program are to 1) carry out the responsibility of the City of Sultan by the Washington State Shoreline Management Act; 2) to guide and regulate future development of the shoreline resources of Sultan; 3) protect the shoreline environment through management of uses, rather than maximize development potential.

The City's efforts to adopt and receive approval on its Shoreline Master Program (SMP) began in 2002. The approval process is divided between a local process and a state review and approval process. The City completed the local approval process on July 12, 2007 when the Council adopted the SMP by Ordinance 915-07. The SMP was submitted to the state to review on October 4, 2007. The City received a Public Comment Summary letter from the Department of Ecology dated February 14, 2008. The letter summarizes the comments received by the Department of Ecology during its public comment period. Only one individual (Josie Fallgatter) commented on the Shoreline Master Program update. The City has 45 days – until Monday, March 31, 2008 in accordance with WAC 173-26-120 (6) to prepare a written response to comments.

The original proposal to the City Council was to exempt small scale, non-motorized, recreational prospecting. However, there is no statutory exemptions for small scale, non-motorized recreational prospecting. The State Shoreline Master Program Guidelines require that any

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mining activity (including gold panning) within a river channel migration zone be conducted under a shoreline conditional use permit. Under the State's requirements, anyone wishing to pan for gold within the Sultan river channel migration zone must apply for and receive a shoreline conditional use permit from the City of Sultan. The City's permitting process requires a public hearing for conditional use permits. Under Chapter 7 of the SMP, the City Council shall review conditional use permits at a closed record hearing. After the City Council has approved a conditional use permit, the SMP Administrator shall file the permit with the DOE for its approval. Under the 2008 fee schedule, the cost for a conditional use application is \$1,000 plus direct costs. A conditional use permit is \$500 plus direct costs. A public hearing requires a \$1,500 deposit plus direct costs to cover the expense of the Hearing Examiner.

Discussion was held regarding gold panning in the river and the need to remove the requirement for people to pay \$2,500 for recreational mining.

Staff was directed to respond to DOE and remove gold mining.

Transportation Benefit District: Mayor Eslick advised that the County has until May 22 to decide if they will form a Transportation Benefit District. They have presented three options for funding – a \$20 annual license fee, ask the voters for a 2% sales tax increase or tolls. They have requested a list of projects from each city. The issue the smaller cities have is the distribution of funds.

Discussion was held on the amount of income the City would receive, use of the funds for maintenance and the funding options that would be acceptable to the public.

PUBLIC COMMENTS

Loretta Storm: In regards to the Transportation Benefit District, there is already a system in place to collect money for road impacts and any changes should be done through that process. The voters should have some way to verify that what they put in they get back. The City holds the open hearing in the middle of the day and they need to let people know that they will not be able to comment during the closed record hearing. In 2002 the opinions of Planning Commissioners were ignored and staff decisions prevailed. If the city is professional they will attract professional developers.

Keith Arndt: The TBD will just give the citizens another tax and they will not get what was promised. Would like to work with the City to keep moving projects forward and to work on development regulations.

Bart Dalmasso: The City is applying for a \$50,000 grant to attract business but he is concerned how the moratorium would impact business. Noted that impact fees can not be used for maintenance, only new construction.

Kay George: Is disappointed with the moratorium and realizes there is probably more going on than the public knows. She voted for them, not for the econo terrorist. The City can't negotiate with them and they need to realize that. The shooting range is a good thing for the community.

Stop Clock: Councilmember Champeaux moved to stop the clock at 10:00 PM; seconded by Councilmember Slawson. All ayes except Councilmember Flower who voted nay.

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COUNCIL COMMENTS

Champeaux: In regards to the Transportation Benefit District, if the County thinks it is a good idea and they will carry the small cities with them like they did with the 800 MHz system. Hopes the City does not get involved as taxes have been increased enough.

Wiediger: Agrees it is not good to partner with the County as the City will get short changed.

Slawson: Reminded the public that there would be a meeting on the shooting range on March 15, 2008. This is a good project and it will benefit the area.

Davenport-Smith: Agrees the Transportation Benefit District is not a good idea.

Blair: The Transportation Benefit District tax is not the same as impact fees and she is not sure how it will help the City. Was not sure if Ms. George was calling the GMA Boards terrorists, but any member of the community can challenge the plan or codes and the City must respond and comply.

Adjournment: On a motion by Councilmember Slawson, seconded by Councilmember Champeaux, the meeting adjourned at 10:05 PM.

Carolyn Eslick, Mayor

Laura J. Koenig, City Clerk