

# SULTAN CITY COUNCIL

## AGENDA ITEM COVER SHEET

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ITEM NO: Public Hearing 1 – Amending SMC 21.04

DATE: July 10, 2008

SUBJECT: Hold a public hearing to consider a proposed amendment to the Sultan Municipal Code 21.04.03 to remove the \$850 filing fee for the Conditional Use Permit and change the hearing body for a Conditional Use Permit.

CONTACT PERSON: Robert Martin, Community Development Director



### ISSUE:

The issue before the City Council is to hold a public hearing to:

1. Amend the Sultan Municipal Code 21.04.030 by removing the \$850.00 required filing fee for Conditional Use Permits and adding language to require the fee based on the adopted fee schedule.
2. Update the Sultan Municipal Code, consistent with SMC 2.26 and 16.120, giving authority to the Hearing Examiner to review Conditional Use Permits instead of the Planning Commission.

### STAFF RECOMMENDATION:

Hold a public hearing to take public comment on the Planning Board's recommendation to amend Sultan Municipal Code 21.04 (Attachment A) to:

1. Remove the \$850.00 fee set in the code and provide for the fee to be set by resolution through the annual fee schedule adopted by the City Council.
2. Change references in SMC 21.04 from "Planning Commission" to "Hearing Examiner" to be consistent with SMC 2.26 and SMC 16.120.

## BACKGROUND:

For comprehensive plan and development regulation amendments, the statutes (RCW 35A.63.073 and 35A.63.070) require at least one public hearing. Notice is to be given as provided by ordinance and published at least ten days prior to the hearing. If continued hearings are held, no additional notices need be published.

The Planning Board discussed this issue briefly at its February 19, 2008 meeting. On April 1, 2008 the Planning Board set the public hearing for April 15, 2008. City staff missed the 10-day notice period for the April 15, 2008 meeting. The notice was sent out on April 22, 2008 and published in the Everett Herald on April 25, 2008 to hold a public hearing on May 6, 2008.

The Washington State Department of Community Trade and Economic Development (CTED) has reviewed this proposed amendment .

The Planning Board held a public hearing on May 6, 2008. There was no public comment, and the Board voted unanimously to recommend the proposed amendment to the City Council.

## SUMMARY:

The City is looking to amend a filing fee for a conditional use permit as set forth in Chapter 21.040.030.

The filing fee was set ten years ago with the adopting ordinance (690-98) and does not cover the costs incurred by the City for staff time to process the permit application. City staff recommend deleting the reference to the filing fee in SMC 21.04 and instead set the filing fee by resolution through the annual fee schedule adopted by the City Council.

In addition, Chapter 21.04 makes references to the planning commission reviewing applications for conditional use permits. This task is now assigned to the hearing examiner as outlined in SMC 2.26 and SMC 16.120. This is a housekeeping item to provide for a consistent code.

## DISCUSSION:

The \$850.00 filing fee has not been significantly adjusted in 10 years. The inflation rate from December 1997 to December 2007 is 30.21%.<sup>1</sup> Adjusted for inflation, the fee would be \$1,106.78

The City's previous policy in constructing a fee schedule for development applications is to, in general, try to recover 100% of direct costs of processing development applications.

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<sup>1</sup>[http://inflationdata.com/Inflation/Inflation\\_Calculators/Inflation\\_Rate\\_Calculator](http://inflationdata.com/Inflation/Inflation_Calculators/Inflation_Rate_Calculator)

The staff work that is accounted for in structuring the fee schedule includes the work of all City departments involved in review of development applications, from the time an application is originally submitted through the time the improvement is constructed and a Certificate of Occupancy is issued.

Moving the filing fee to the annual fee resolution will allow the fee to be adjusted as necessary to ensure the City is recovering costs consistent with Council policy.

**FISCAL IMPACT:**

The fiscal impact is to ensure the cost of providing service to the applicant meets the City's policy goal recovering 100% of direct costs of processing development applications.

For comparison, the table below shows the fees charged by area cities for a conditional use permit. The Association of Washington Cities conducts a fee survey every other year. AWC conducted the last fee survey in 2006.

| <u>City</u>       | <u>Conditional Use Permit<br/>2006 AWC Fee Survey</u> |
|-------------------|---|
| Carnation         | \$1000  |
| Darrington        | \$850   |
| Gold Bar          | \$225   |
| Kirkland          | \$8,160 + \$300 (unit)                                |
| Marysville        | \$1,000 + \$1,500 (if public hearing<br>required)     |
| Mill Creek        | \$1,500   |
| Monroe            | \$1,000   |
| Sultan (current)  | \$850   |
| Sultan (proposed) | \$500 + direct expense                                |

**RECOMMENDATION:**

Hold a public hearing to:

1. Amend the Sultan Municipal Code 21.04.030 by removing the \$850.00 required filing fee for Conditional Use Permits and adding language to require the fee based on the adopted fee schedule.

2. Update the Sultan Municipal Code, consistent with SMC 2.26 and 16.120, to give authority to the Hearing Examiner to review Conditional Use Permits instead of the Planning Commission.

#### ATTACHMENTS

- A -- Approved Planning Board Minutes of May 6, 2008 (Pertinent Part)
  - B -- Proposed Amendments to SMC 21.04 as Ordinance No. 938-08
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**SULTAN PLANNING BOARD MEETING**

**319 MAIN STREET**

**May 6, 2008**

The meeting was called to order at 6:35 p.m. by Chairperson Latimore.

Planning Board members Present: Kurt Latimore, Jeff Cofer, Charles Van Pelt, George Schmidt, and Scott Zaffram.

Council members Present: Mayor Eslick, Jim Flower, Sarah Davenport Smith, Ron Wiediger, and Kristina Blair.

Staff Present: City Administrator Deborah Knight, and Planning Board Secretary Tami Pevey.

Consultants Present: Interim Planner Brad Collins; Perfeet Engineering; Land Use Attorney Andy Lane; Reid Shockey, Shockey Brent; John Wilson; Financial Consultant Pat Dugan; Storm water Consultant Dean Franz.

**PUBLIC HEARING**

PB Latimore opened the public hearing at 6:35 p.m. by reading the procedures. No public objections to board members present; no objections from board members on their presence.

Administrator Knight presented the staff background explaining during the annual fee schedule meeting council expressed their intent to move the \$850 filing fee for the Conditional Use Permit from SMC 21.04.030 to the fee schedule so they can be updated yearly as needed. Additionally in further review of SMC 2.26 and 16.120 references to the Planning Commission having authority to review Conditional Use Permits should be removed as it is a function and authority of the Hearing Examiner. From council's viewpoint this is a housekeeping item that needs to be done to clean up the code.

Discussion held on the reasoning why conditional use permits go to the hearing examiner and the direct expenses involved. Administrator Knight stated she has made a

recommendation to the council to perform a study to get a better idea of the correct direct and indirect costs.

PB Latimore opened the floor to public comment; none given. On a motion by PB Van Pelt, second by PB Schmidt the public hearing was closed at 6:40 p.m.

On a motion by PB Van Pelt, seconded by CM Blair the public hearing was closed.

Hearing no discussion from board members present on a motion by PB Cofer, PB Zaffram – go ahead with the proposal to removed the \$850 filing fee as described in item 1 and make the changes referenced in item 2 consistent with the Sultan Municipal Code; All board members approved.

#### **ACTION ITEMS**

##### **Approval of the April 15, 2008 Minutes**

The minutes were approved as submitted; all in agreement.

Recess at 6:45 p.m. to allow council members to arrive for joint meeting set for 7:00 p.m.

Meeting restarted at 7:01 p.m.

#### **JOINT CITY COUNCIL/PLANNING BOARD WORKSHOP**

##### **PUBLIC COMMENTS**

Jerry Gibson, 1102 Dyer Road – Thanked the planning board and council members for their work. He stated that in surfing the internet he ran across information regarding the "Sultan Crossing" and questioned the location of this parcel. (Mayor Eslick explained it is on Sam Wold's property) Mr. Gibson passed out information to the board and there were murmurs from the members present that it was a broker listing. Mr. Gibson questioned where it is at in the comp plan and proposals being discussed. He also added there has been no public notice on this issue. Hearing issues on Sultan Basin Road phase 2 and 3; and hearing that it is dead and grant money has been returned. Questioning what is going on? A year ago he made a comment to change the impact

ORDINANCE 983-08

**AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON AMENDING  
SULTAN MUNICIPAL CODE SECTION 21.04 PERTAINING TO FEES AND  
ADMINISTRATION OF CONDITIONAL USE APPLICATIONS.**

WHEREAS, it is the intent of the City to publish its fees in a Fee Schedule, and remove various fees from the Municipal Code; and

WHEREAS, Sultan Municipal Code Section 21.04.030 contains a codified provision for a filing fee of \$850.00 for a conditional use application; and

WHEREAS, authorization for the City of Sultan Planning Commission has been repealed and authorities for conduct of quasi-judicial hearings has been vested in a Hearing Examiner; and

WHEREAS, Sultan Municipal Code Section 21.04 contains a codified provision stating that the Planning Commission will review and make recommendations to the City Council regarding conditional use applications;

WHEREAS, the City of Sultan Planning Board held a public hearing on this amendment proposal at its regular meeting of May 6, 2008;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SULTAN ,  
WASHINGTON DO ORDAIN AS FOLLOWS:**

**Section 1.** The City of Sultan hereby amends Sultan Municipal Code Section 21.04 to: remove the fee reference from the code; delete references to the planning commission and; vest with the hearing examiner all responsibilities previously vested in the planning commission.

**Section 2.** Sultan Municipal Code is amended as follows:

**Chapter 21.04  
CONDITIONAL USE PERMITS**

Sections:

21.04.010 Purpose.

21.04.020 Uses requiring a conditional use permit.

21.04.030 Application – Requirements and fees.

21.04.050 Criteria.

21.04.052 Additional criteria for single-family detached dwelling  
(clustered).

21.04.054 Additional criteria for duplexes or two-family dwellings.

21.04.060 Expiration and renewal.

21.04.070 Revocation of permit.

21.04.080 Performance bond and other security.

21.04.090 Resubmittal of application.

**21.04.010 Purpose.**

It is the purpose of this chapter to establish review and permit approval procedures for unusual or unique types of land uses, which, due to their nature, require special consideration of their impact on the neighborhood, and land uses in the vicinity. The uses in this chapter may be located in any district by special permission of the ~~planning commission~~ hearing examiner under such conditions as the commission may recommend and the city council shall approve. (Ord. 690-98)

**21.04.020 Uses requiring a conditional use permit.**

The following are the uses which require a conditional use permit:

A. The conditional uses listed in the specified use districts require a conditional use permit in order to locate and operate in an appropriate zone district within the city.

B. Existing nonconforming uses which wish to expand. (Ord. 690-98)

**21.04.030 Application – Requirements and fees.**

Application for conditional use permits shall be filed with the planning department on forms prescribed by that office. A filing fee, set by resolution through the annual fee schedule adopted by the City Council, of \$850.00 shall accompany all applications. The ~~planning commission~~ hearing examiner will review applications for conditional use permits and the recommendations will be passed to the city council for final action. The ~~planning commission~~ hearing examiner may recommend to the city council denial, approval, or approval with conditions. Conditional use applicants must adhere to all applicable public notification requirements. Denial of conditional use permit applications is not appealable. All conditional use permits are subject to design review procedures. (Ord. 690-98)

**21.04.050 Criteria.**

The following criteria shall apply in granting a conditional use permit:

A. The proposed conditional use will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the proposed conditional use or in the district in which the subject property is situated;

B. The proposed conditional use shall meet or exceed the performance standards that are required in the district it will occupy;

C. The proposed conditional use shall be compatible generally with the surrounding land uses in terms of traffic and pedestrian circulation, building and site design as approved by the design review committee;

D. The proposed conditional use shall be consistent with the goals and policies of the comprehensive land use policy plan;

E. All measures have been taken to minimize the possible adverse impacts, which the proposed use may have on the area in which it is located. (Ord. 690-98)

**21.04.052 Additional criteria for single-family detached dwelling (clustered).**

The following additional criteria apply to allow single-family detached dwelling(s) (clustered):

A. The density on the property may not be greater than but should match the density for single-family detached dwellings;

B. Where urban density goals are to be achieved, but critical areas can be adequately protected, dimensional requirements for lot size, lot width, front and rear yard setbacks may be decreased by no more than 20 percent;

C. As a result of the design of the subdivision, a minimum of 20 percent of the net land area of continuous, publicly accessible open space such as stream or wetland and associated buffers, a ravine, bluff or other unique topographic feature, or conservation area is preserved;

D. As a result of the dwellings and any subdivision, the availability of housing to all economic segments of the population is increased, and housing density variety is preserved throughout the community. (Ord. 780-02 § 16)

**21.04.054 Additional criteria for duplexes or two-family dwellings.**

The following additional criteria apply to allow duplexes or two-family dwellings:

A. Only one other duplex or multifamily use may exist within 300 feet of the proposed use and there must be at least a 100-foot separation (building to building) between the uses.

B. The proposed dwelling has been designed to be harmonious with the neighborhood and is constructed to provide the appearance of a single-family unit by, for example, altering the location of the front doors and windows; garages and access to garages; parking; landscaping and fencing; utilities and mailbox locations; building heights consistent with surrounding properties; exterior colors and materials; and differing setbacks, all of which are confirmed by a site plan. (Ord. 780-02 § 17)

**21.04.060 Expiration and renewal.**

A conditional use permit shall automatically expire one year after a notice of decision approving the permit is issued unless a building permit conforming to plans for which the CUP was granted is obtained within that period of time. A conditional use permit shall automatically expire unless substantial construction of the proposed development is completed within two years from the date a notice of decision approving the permit is issued. The ~~planning commission~~ hearing examiner or city council, on

appeal, may authorize longer periods for a conditional use permit if appropriate for the project. The ~~planning commission~~ hearing examiner or city council, on appeal, may grant a single renewal of the conditional use permit if the party seeking the renewal can demonstrate extraordinary circumstances or conditions not known or foreseeable at the time the original application for a conditional use permit was granted, which would not warrant such a renewal. No public hearing is required for a renewal of a conditional use permit. (Ord. 690-98)

#### **21.04.070 Revocation of permit.**

A. The ~~planning commission~~ hearing examiner may revoke or modify a conditional use permit. Such revocation or modification shall be made on any one or more of the following grounds:

1. That the approval was obtained by deception, fraud, or other intentional and misleading representations;

2. That the use for which such approval was granted has been abandoned;

3. That the use for which such approval was granted has at any time ceased for a period of one year or more;

4. That the permit granted is being exercised contrary to be the terms or conditions of such approval or in violation of any statute, resolution, code, law or regulation; or

5. That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety.

B. Any aggrieved party may petition the ~~planning commission~~ hearing examiner in writing to initiate revocation or modification proceedings.

C. Before a conditional use permit may be revoked or modified, a public hearing shall be held. Procedures concerning notice, reporting and appeals shall be the same as required by this chapter for the initial consideration of a conditional use permit application. (Ord. 690-98)

#### **21.04.080 Performance bond and other security.**

A performance bond or other adequate and appropriate security may be required for any elements of the proposed project which the ~~planning commission~~ hearing examiner or city council, on appeal, determines are crucial to the protection of the public welfare. Such bond shall be in an amount equal to 125 percent of the cost of the installation or construction of the applicable improvements. (Ord. 690-98)

#### **21.04.090 Resubmittal of application.**

An application for a conditional use permit, which has been denied, may not be resubmitted within six months from the date of ~~planning commission~~ hearing examiner or council disapproval, whichever is later. (Ord. 690-98).

**PASSED** by the City Council and **APPROVED** by the Mayor the \_\_\_<sup>th</sup> day of \_\_\_\_\_, 20\_\_.

CITY OF SULTAN

By \_\_\_\_\_  
Carolyn Eslick, Mayor

Attest:

By \_\_\_\_\_  
Laura Koenig, City Clerk

Approved as to form:

By \_\_\_\_\_  
Kathy Hardy, City Attorney