

**SULTAN CITY COUNCIL**  
**AGENDA ITEM COVER SHEET**

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**ITEM NO:** PH-1

**DATE:** July 24, 2008

**SUBJECT:** Closed Record Public Hearing:  
Anderson Farm Planned Unit Development  
Recommendation from Hearing Examiner

**CONTACT PERSON:** Robert C. Martin, Community Development Director



**ISSUE:**

Issue final decision on Anderson Farm Planned Unit Development as provided by SMC 16.10.090 C. (Attachment A).

**ALTERNATIVES:**

- A. Reverse the Hearing Examiner and approve the proposed preliminary PUD and Subdivision.
- B. Recommend revisions that might bring the proposal into conformance with the issues raised by the Hearing Examiner, thereby continuing action on the project until the proposal meets the standards.
- C. Uphold the Hearing Examiner's recommendation of denial, thereby completing City action on the proposal, and allowing the applicant to appeal to appropriate court if they desire to continue.

**EXECUTIVE SUMMARY:**

City staff determine that the Anderson Farm Planned Unit Development did not meet significant requirements of the applicable codes and development standards. A report recommending denial was prepared for the public hearing conducted by the Hearing Examiner on May 6, 2008. The Hearing Examiner agreed with many of the staff findings, and rejected some of them. The Hearing Examiner has recommended that the City Council deny the application.

**HEARING EXAMINER SUMMARY (Attachment C, Pages 51 &52)**

1. "The proposal does not meet most of the review criteria for approval as a preliminary subdivision." "The question then is whether Anderson Farm should be returned for correction or simply denied. This proposal is so far from acceptable that the Examiner recommends that it be denied"

2. The areas of deficiency listed by the Hearing Examiner are:

- a. Open Space
- b. Drainage ways
- c. Streets and roads
- d. Alleys
- e. Other public ways
- f. Transit stops
- g. Potable water supply
- h. Sanitary wastes
- i. Parks and recreation
- j. Playgrounds
- k. Schools and schoolgrounds
- l. Safe walking conditions
- m. Utility consistency

**HEARING EXAMINER RECOMMENDATION (Attachment C, Page 53)**

“Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner’s site view, the Examiner **RECOMMENDS DENIAL** of the proposed preliminary subdivision and planned unit development of *Anderson Farm*.” May 16, 2008 (emphasis in original)

**RECOMMENDATION:**

Staff recommends that the Council uphold the Hearing Examiner’s recommendation and move to deny the application for Anderson Farm Subdivision and Planned Unit Development.

**SUMMARY:**

To comply with SMC 16.10.080 C, it is necessary to conduct a closed record hearing to review and to accept, modify, or reject the hearing examiner recommendation. The council decision is final, and may only be appealed to superior court under provisions of RCW Chapter 36.70C.

Testimony at a closed record hearing is limited to staff, the applicant, any filed appellants, and questions from the Council.

Council is charged with reviewing the record of the proceeding and taking brief testimony from staff, and the applicant. There were no filed appellants in response to the Hearing Examiner's denial recommendation, so there are no appellants from which to take testimony. The general public is welcome to observe the hearing, but may not testify.

**BACKGROUND:**

September 15, 2005: Grandview Inc., the applicant, submitted an application for a Plat and Planned Unit Development (PUD) proposing 35 single-family lots.

October 11, 2005: A letter determining completeness of the application was sent by the city.

May 4, 2006: A revision of the application was received reducing the number of proposed lots to 26.

August 23, 2006 and June 16, 2006: The City requested additional materials from the applicant.

January 26, 2007: Additional modifications to the plat design were submitted by the applicant.

October 16, 2007: Mitigated Determination of Nonsignificance (MDNS) issued by the city.

November 13, 2007: Applicant appealed the MDNS.

February 28, 2008: The City prepared a response to the MDNS Appeal for the Hearing Examiner.

May 5, 2008: City staff prepared a Report and Recommendation to the Hearing Examiner on the Plat and PUD. This report included 22 attachments. The report recommended denial of the application based on environmental and development standards (Attachment B).

May 6, 2008: The Hearing Examiner conducted a hearing on Anderson Farm.

May 16, 2008: The Hearing Examiner wrote a recommendation of Denial and forwarded it to the City Council for consideration in a closed record hearing as provided by Sultan Municipal Code (SMC) 16.10.090 C (Attachment C).

**DISCUSSION:**

1. The entire file of this proceeding is available for review at City Hall.

2. The record that was reviewed by the Hearing Examiner is attached to this report as "Attachment B". "Attachment B" contains the application, traffic, soil, and environmental studies submitted by the applicant, City staff reports and responses to submitted materials, appeals filed by the applicant, and State Environmental Policy determination. The index to "Attachment B" is provided behind the cover sheet for that attachment, and is titled Exhibits: Anderson Farm Preliminary PUD and Subdivision (FPPUD05-003). This index lists Exhibits S-1 through S-22. Where necessary, the "S- \_ " designation will be used to direct the reader to areas under discussion.

3. The applicant proposed a Subdivision Plat and PUD of 35 lots in first submittal on September 13, 2005 (Exhibit S-3) located on approximately 6.47 acres bordering the west side of Sultan Basin Road in the vicinity of 135<sup>th</sup> St. SE. (see Attachment B, Pages 130 and 131).

The property is in the Medium Density Residential (MD) zone

- See Exhibit S-1, pages; 1 of 24, 2 of 24, and 3 of 24 for area details).
- See Exhibit S-3.a through S-3.m and S-4 and S-5 for original application and supporting studies filed by applicant)
- See Exhibit S-9 for revised proposal submitted by applicant on May 4, 2006)

4. The applicant revised the application to 26 lots in second submittal on May 4, 2006.

- (see Exhibit S-9 and Exhibit S-17).

**Following are staff findings from the Staff Report to the Hearing Examiner (Exhibit S-1).**

**"Attachment D" is a table summarizing key topics that were addressed at the addressed in the Staff Report and at the Hearing Examiner hearing.**

5. the application was complete and met the criteria that validated the application for a PUD and was a valid use in the MD zone with appropriate densities, (see Exhibit S-1, Pages; 4 of 24, and 5 of 24).

6. the application did not meet the minimum lot size requirements of the MD zone, and that the reduced lot sizes proposed under the PUD standards were not properly compensated for in the provision of a variety of housing types and recreational amenities (see Exhibit S-1 Pages 5 of 24, and 6 of 24).

7. the proposal could be conditioned to meet the lot width standards of the zone and the PUD requirements (see Exhibit S-1, page 6 of 24)

8. the proposal did not meet the front yard setback requirement in that it indicated 15-foot front yard setbacks on all lots and that the code requires 20-foot front yards. (see Exhibit S-1, page 6 of 24, and 7 of 24).

9. the proposal met the requirements for side yard setbacks (see Exhibit S-1, page 7 of 24).

10. the proposal could be conditioned to comply with the rear yard setback requirements (see Exhibit S-1, page 7 of 24).
11. the proposal met the Comprehensive Plan Policies and Objectives for the Moderate Density Residential district (see Exhibit S-1, page 7 of 24).
12. the proposal did not meet the code standards for open space and perimeter landscaping and fencing (see Exhibit S-1, pages 8 of 24, and 9 of 24).
13. requirements of SMC 16.76 regarding vegetation protection could not be assessed based on the application submitted (see Exhibit S-1, page 9 of 24).
14. the proposal did not meet the standards for the number and variety of trees planted in the development (see Exhibit S-1, page 9 of 24).
15. the proposal did not meet the standards for reduction of wetland buffers under the innovative design provisions of SMC 16.80.100 (see Exhibit S-1, pages 9 of 24, and 10 of 24).
16. the proposal met the requirements for verification of water availability (see Exhibit S-1, page 11 of 24, and Exhibit S-3.d).
17. the proposal met the requirements for verification of sewer service availability (see Exhibit S-1, page 11 of 24, and Exhibit S-3.e).
18. the proposal did not meet the stormwater management requirements of SMC 16.92.010 (see Exhibit S-1, pages 11 of 24, and 12 of 24). (See also Exhibit S-9, a)b)c)).
19. the proposal did not meet standards for pedestrian and vehicular lot access and design of on-site streets. Street width, parking, and separation of pedestrians from vehicles were cited as specific failures. Reduced right-of-way and reduced street width were proposed that were similar to private road standards. The proposed street cross-section was not supported by the city engineer (see Exhibit S-1, page 12 of 24, and Exhibit S-7).
20. the proposal generally meets the standards for development of 135<sup>th</sup> St. SE as an off-site street, but additional geotechnical work needed to be done to determine the amounts of base and asphalt needed in the specific area (see Exhibit S-1, page 13 of 24).
21. the proposal does not meet the standards for road development where a proposed subdivision road is partly on and partly off of the developer's land. The proposal was to reduce to one-half of a fully-developed street and use that until adjacent property developed. (see Exhibit S-1, page 13 of 24, and 14 of 24)

22. the proposal generally meets the standards for development of Sultan Basin Road as an off-site street, but additional geotechnical work needed to be done to determine the amounts of base and asphalt needed in the specific area and the addition of turn lane, sidewalk, and plantings (see Exhibit S-1, page 14 of 24).
23. the proposal meets the requirements for traffic impact mitigation through payment of the appropriate impact fees at the time of issuance of building permits for the lots (see Exhibit S-1, page 14 of 24).
24. the proposal meets the requirements for school impact mitigation through payment of the appropriate impact fees at the time of issuance of building permits for the lots (see Exhibit S-1, page 14 of 24).
25. the proposal meets the requirements for park and recreation impact mitigation through payment of the appropriate impact fees at the time of issuance of building permits for the lots (see Exhibit S-1, page 15 of 24).
26. the proposal does not meet the requirements for fire hydrant placement (see Exhibit S-1, page 15 of 24).
27. the proposal does not lower the level of service (LOS) for roads, police, and parks and recreation either due to low impacts or mitigations and facility improvements. It is necessary to extend the water and sewer availability certificates. The proposal can readily be conditioned to meet all concurrency requirements (see Exhibit S-1, pages 15 of 24, 16 of 24, and 17 of 24).

**Following are State Environmental Policy Act (SEPA) issues**

28. An updated SEPA Checklist was submitted by the applicant on September 15, 2005 (see Exhibit S-1, page 17 of 24, and Exhibit S-9.b).
29. The City issued a Mitigated Determination of Nonsignificance (MDNS) on October 16, 2007 (see Exhibit S-1, page 17 of 24, and Exhibit S-19). The MDNS was based on information in Exhibits S-3.j, S-3.k, S-9.b, S-9.c, S-16, and S-17.
30. The SEPA MDNS contained seven mitigating measures (see Exhibit S-1, pages 17 of 24, and 18 of 24).
31. The applicant filed an appeal of the MDNS on November 13, 2007. This appeal challenged mitigating measures related to: wetlands and buffers, public safety and roads, development design and densities, linkage of concurrency issues to police services, and timing of issuance of the MDNS by the City (see Exhibit S-20)
32. The City challenged the validity of the appeal based on the fact that the applicant did not submit the filing fee by the deadline even though the written appeal was filed in a timely manner (see Exhibit S-1, page 18 of 24 and Exhibit S-21).

33. The City responded to the SEPA appeal (see Exhibit S-1, pages 19 of 24 and 20 of 2, Exhibit S-2, Exhibit S-21, and Exhibit S-22).

**The following are from the Hearing Examiner Report and Recommendation included Here as "Attachment C"**

34. The City's challenge to the untimely filing of the SEPA Appeal based on late submission of the filing fee was dismissed (See Attachment C, pages 5 & 6).

35. The proposal does not meet the location criteria for PUD's as provided in SMC 16.10.110 (see Attachment C, pages 13 to 16).

36. The proposal does not meet the lot size criteria for PUD's as provided in SMC 16.10.120(B)(2) (see Attachment C, pages 16 to 18).

37. The proposal does not meet the lot width criteria for PUD's as provided in SMC 16.10.120(B)(2) (see Attachment C, pages 18 to 19).

38. The proposal does not meet the front yard setback criteria for PUD's as provided in SMC 16.10.120(B)(1)(f) (see Attachment C, pages 19 & 20).

39. The proposal meets the side yard setback criteria for PUD's and qualifies for a reduction from 10 feet to 5 feet as provided in SMC 16.10.120(B)(1)(a) (see Attachment C, pages 20 & 21).

40. The proposal meets the rear yard setback criteria for PUD's and qualifies certain reductions with specific conditions for fencing and plat notation as provided in SMC 16.10.120(B)(1)(a) (see Attachment C, pages 21 & 22).

41. The proposal does not meet the recreation criteria for PUD's as provided in SMC 16.72 (see Attachment C, pages 22 to 24).

42. The proposal does not meet the open space criteria for PUD's as provided in SMC 16.10.140 (see Attachment C, pages 24 to 28).

43. The proposal meets the vegetation inventory criteria for PUD's and is in conformance with SMC 16.76 (see Attachment C, page 28).

44. The proposal does not meet the landscape plan criteria for PUD's as provided in SMC 16.104.090(A)(1) (see Attachment C, pages 28 to 31).

45. The proposal does not meet the wetland buffer and innovative development design criteria for PUD's as provided in SMC 16.80.080(B)(3), (D)(2), and (D)(1), and SMC 16.80.080(B) & (D), and SMC 16.80.100 (see Attachment C, pages 31 to 37).

46. The Hearing Examiner did not review or rule on water and sewer availability.

47. The proposal does not meet the stormwater plan criteria as provided in the Department of Ecology Stormwater Management Manual for the Puget Sound Basin as adopted by SMC 16.92.010(D) (see Attachment C, pages 38 to 39).
48. The proposal does not meet the internal street criteria for PUD's as provided in SMC 16.28.230(B) (see Attachment C, pages 39 to 44).
49. The proposal generally meets the off-site street development standards for 135<sup>th</sup> St. SE, and can be appropriately conditioned and corrected to meet the applicable standards. (see Attachment C, pages 45 to 47).
50. The proposal generally meets the off-site street development standards for Sultan Basin Road and can be appropriately conditioned and corrected to meet the applicable standards (see Attachment C, page 47).
51. The proposal is not required to designate location of fire hydrants on preliminary plans and does not violate SMC 16.10 or 16.28 (see Attachment C, page 47 & 48).
52. The City cannot issue a Certificate of Concurrency for the proposal. The proposal cannot be approved without a Certificate of Concurrency. (see Attachment C, pages 48 to 51).
53. The proposal does not provide a written narrative analyzing compliance with the Comprehensive Plan as provided in SMC 16.10.070(C)(3) (see Attachment C, page 51).
54. The proposal is not required to provide a written narrative analyzing municipal service economic impact as provided in SMC 16.10.070(C)(10) (see Attachment C, page 51).

**ATTACHMENTS:**

Attachment A: SMC 16.10.090 C.

Attachment B: Staff Report for Hearing Examiner Hearing  
including Application and supporting materials

Attachment C: Hearing Examiner Recommendation

Attachment D: Table of Hearing Examiner Topics