SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET

ITEM NO: D-1

DATE: August 14, 2008

SUBJECT: Amendments to SMC 2.26 Hearing Examiner

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the City Council is to discuss proposed amendments to Sultan Municipal Code (SMC) 2.26 – Hearing Examiner to delete sections of the code that reference the process for appealing an Examiner's decision.

The proposed changes to SMC 2.26 include some "housekeeping" items to make SMC 2.26 consistent with SMC 21.04 (Conditional Use Permits) and Title 16.

STAFF RECOMMENDATION:

1. Review the proposed changes to SMC 2.26.
2. Direct staff to prepare an adopting ordinance based on Council discussion.

SUMMARY:

At the City Council retreat in January 2008, the City Council discussed its procedures for quasi-judicial closed record hearings on preliminary plat applications, preliminary planned unit development (PUD) applications, variances, and conditional use permits.

The Council directed staff to review SMC 2.26 and propose amendments to be consistent with city code and state law. The City's Hearing Examiner, John Galt is currently reviewing the staff proposed changes. Mr. Galt's comments and recommendations will be considered for inclusion in the final adopting ordinance.

Under the city's process, land use applications that are not handled administratively by City staff first go to the Hearing Examiner for an open record hearing. The Hearing Examiner then makes a **recommendation** to the City Council that either recommends approval, approval with conditions, or denial of the application. The Hearing Examiner can also deny with prejudice which means the applicant cannot apply with the same project under the same circumstances.

The City Council holds a quasi-judicial closed record hearing where it can accept the recommendation, reject the recommendation, or remand the application back to the Hearing Examiner for further proceedings. Applicants must appeal Council decisions to Superior Court under the State of Washington Land Use Petition Act (LUPA).

The City's process is somewhat confusing because Sultan Municipal Code 2.26.140 and 2.26.150 were not amended following Regulatory Reform in 1995.

Proposed Changes to SMC 2.26:

2.26.090 Duties of the Examiner

This section is not consistent with other municipal code sections. Staff recommends deleting 2.26.090(A) since SMC 21.04 takes the Hearing Examiner out of the approval process for conditional use permits. SMC 2.26.090(C) is revised to remove subdivisions which are appealed to Superior Court under LUPA.

2.26.120 Examiner's Decision

Delete 2.26.120(C) and create new section for variance process. This section is moved to new section 2.26.190. The variance process should be described separately from the other Hearing Examiner decisions.

Delete 2.26.120 (D) and create new subsection under 2.26.120 on reconsideration.

2.26.140 Appeal from Examiner's Decision

Delete appeal process. Appeals to Superior Court under LUPA per Chapter 36.70C RCW.

2.26.150 Council Consideration

Delete Council consideration of Hearing Examiner decisions. Replace with Examiner's recommendations shall come to Council for final decision in accordance with the procedures in the underlying ordinance or statute governing the land use permit or other land use application.

2.26.160 Effect of Council Decision

Deleted, covered under Title 16 – Unified Development Code for LUPA decisions.

DISCUSSION:

The Hearing Examiner and City Council serve in a role similar to that of a judge. The Hearing Examiner ensures that parties receive proper due process; and issues final

decisions on some land use applications and makes recommendations to the City Council on others.

Applicants and appellants can't technically appeal a Hearing Examiner's recommendation. Although, the City Council has been hearing appeals of Hearing Examiner's recommendations per SMC 2.26 to ensure the applicants/appellants due process.

Hearing Examiner land use **decisions** are appealed to Superior Court under the Land Use Petition Act (LUPA).

Council land use decisions are appealed to Superior Court under LUPA.

Appeal provisions to Superior Court under LUPA are found in Sultan Municipal Code Title 16 (Unified Development Code).

BACKGROUND

Open and Closed Record Hearings

Under Regulatory Reform, all cities and counties (GMA and non-GMA) must have established a project permit process to do the following (RCW 36.70B.050):

1. Combine SEPA review process with process for review of project permit applications (see above), and
2. Provide for no more than one open record hearing and one closed record appeal on a project permit application.

What is an open record hearing?
It is the traditional public hearing in which testimony, evidence, and other information (reports, studies, etc.) is presented, where the record for the decision on the project permit is developed. It may be held prior to the decision on the project permit or it may be held on an appeal (such as from an administrative decision). (RCW 36.70B.020(3))

What is a closed record hearing?
It is a proceeding (typically this would be before the legislative body) held after an open record hearing on a project permit application. No, or only limited, new evidence or information may be presented (the record is closed). Basically, all that can be presented would be oral argument based on the record. (RCW 36.70B.020(1))

The City can hold only one open record hearing on a land use application involving a quasi-judicial decision (Chapter 36.70B RCW). The purpose of the hearing is to give the public an opportunity to present evidence to be included in the official record. Participation by everyone with an interest is highly encouraged. The official record becomes the source for making the final decision.

Sultan Municipal Code 2.26.140 and 2.26.150 provided for an appeal process to a Hearing Examiner decision that was inconsistent with city code and state statutes. City

staff are proposing changes to the Sultan Municipal Code to resolve the inconsistencies.

ALTERNATIVES:

1. Review the proposed changes to SMC 2.26 and direct staff to prepare an adopting ordinance based on Council discussion. This alternative will amend the Sultan Municipal Code and resolve inconsistencies in the code. It is the intent of this proposal to clarify the land use process for applicants and appellants.
2. Review the proposed changes to SMC 2.26. **Do Not** direct staff to prepare an adopting ordinance based on Council discussion. This alternative implies that the City Council has additional questions or concerns regarding the changes proposed by City Staff. The City does not have any land use applications pending for the Hearing Examiner.

RECOMMENDED ACTION:

1. Review the proposed changes to SMC 2.26.
2. Direct staff to prepare an adopting ordinance based on Council discussion.

ATTACHMENTS

A – Draft Ordinance Amending SMC 2.26 (Legislative Mark-up)

CITY OF SULTAN
WASHINGTON
ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON, AMENDING AND REPEALING CERTAIN SECTIONS OF CHAPTER 2.26, HEARING EXAMINER, OF THE SULTAN MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City Council desires to amend certain provisions of Sultan Municipal Code Chapter 2.26 in order to reconcile inconsistencies within the Sultan Municipal Code; and

WHEREAS, a public hearing on the proposed amendments was held before the Planning Board of the City of Sultan on August 5, 2008, and the Planning Board recommended adoption;

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

Chapter 2.26

HEARING EXAMINER

Sections:

2.26.010 Purpose.
2.26.020 Creation of hearing examiner position.
2.26.030 Appointment.
2.26.040 Qualifications.
2.26.050 Removal.
2.26.060 Freedom from improper influence.
2.26.070 Conflict of interest.
2.26.080 Rules.
2.26.090 Duties of the examiner – Applications.
2.26.100 Reports of city departments.
2.26.110 Public hearing.
2.26.120 Examiner's recommendation or decision.
2.26.130 Notice of examiner's recommendation or decision.
2.26.140 Appeal from examiner's decision.
2.26.150 Council consideration.

~~2.26.160 Effect of council action.~~
2.26.180 Local improvement district assessment roll hearings.
2.26.190 Variance criteria.

2.26.010 Purpose.

The purpose of this chapter is to establish a system of land use regulatory hearings which will satisfy the following basic needs:

A. A more prompt opportunity for a hearing and decision on alleged violations of land use regulations, and such other regulations as may be assigned to the hearing examiner;

B. To provide an efficient and effective system for deciding variances and appeals from administrative decisions;

C. To help ensure procedural due process and appearance of fairness by holding such hearings before a neutral party, competent in the fields of land use and procedural requirements. (Ord. 550, 1990)

2.26.020 Creation of hearing examiner position.

Pursuant to Chapter 35A.63 RCW, the office of hearing examiner, hereinafter referred to as examiner, is created. All land use matters of a quasi-judicial nature, not requiring a modification of any ordinance or legislation shall be referred to the examiner who shall interpret, review and implement land use regulations in accordance with the procedures set forth herein. (Ord. 701, 1999; Ord. 550, 1990)

2.26.030 Appointment.

The hearing examiner shall be appointed by the mayor from a list of qualified persons approved by the council. The council shall approve the compensation of the hearing examiner as with other professional and consultant positions. (Ord. 701, 1999; Ord. 550, 1990)

2.26.040 Qualifications.

Examiners shall be appointed solely with regard to their qualifications for the duties of their office and will have such training and experience as will qualify them to conduct administrative or quasi-judicial hearings on regulatory enactments and to discharge the other functions conferred upon them. Examiners shall hold no other elective or appointive office of position in the city of Sultan. (Ord. 550, 1990)

2.26.050 Removal.

The mayor with concurrent majority vote of the city council may remove an examiner from office for cause. (Ord. 550, 1990)

2.26.060 Freedom from improper influence.

No person, including city officials, elected or appointed, shall attempt to influence an examiner in any matter pending before him, except at a public hearing duly called for such purpose, or to interfere with an examiner in the performance of his duties in any other way; provided, that this section shall not prohibit the city's attorney from rendering legal service to the examiner upon request. (Ord. 550, 1990)

Section 1. SMC Section 2.26.070 Amended. Section 2.26.070 of the Sultan Municipal Code is hereby amended to read as follows:

2.26.070 Conflict of interest.

No examiner shall conduct or participate in any hearing, decision, or recommendation in which the examiner has a direct or indirect substantial financial or familial interest or concerning which the examiner has had substantial prehearing contacts with proponents or opponents. Nor, ~~on appeal from an examiner's decision,~~ in considering an examiner's recommendation, shall any member of the council who has such an interest or has had such contacts participate in consideration thereof.

2.26.080 Rules.

The examiner shall have the power to prescribe rules for the scheduling and conduct of hearings and other procedural matters related to the duties of his office. Such rules may provide for cross-examination of witnesses. (Ord. 550, 1990)

Section 2. SMC Section 2.26.090 Amended. Section 2.26.090 of the Sultan Municipal Code is hereby amended to read as follows:

2.26.090 Duties of the examiner – Applications.

A. The examiner shall receive and examine available information, conduct public hearings, prepare a record thereof, and enter findings of fact and conclusions based upon those facts, which conclusions shall represent the final action on the application~~unless appeal, as specified in this section,~~ for the following types of applications:

~~A. Denials of conditional use permits;~~

~~B. Denials of variance;~~

~~C. Appeals on short plats and subdivisions;~~1. Certain requests for a variance;

2. Appeals on short plats;

~~D.~~3. Appeals from administrative determination of the city's land use regulation codes;

4. Appeals of a threshold determination or final EIS under SEPA.

~~E.~~B. The examiner is empowered to act in lieu of the board of adjustment, and such other officials, boards or commissions as may be assigned. Whenever existing ordinances, codes or policies authorize or direct the board of adjustment, or other officials, boards or commissions to undertake certain activities which the examiner has been assigned, such ordinances, codes or policies shall be construed to refer to the examiner.

~~F.~~C. The hearing examiner is empowered consistent with SMC 2.26.120(D) and rules adopted by the hearing examiner to reconsider decisions or recommendations of the hearing examiner. ~~(Ord. 764-01; Ord. 550, 1990)~~

2.26.100 Reports of city departments.

On any land use issue coming before the examiner, the building official shall coordinate and assemble the reviews of other city's departments, governmental agencies, and other interested parties and shall prepare a report summarizing the factors involved and the planning commission/city council findings and recommendations. At least seven calendar days prior to the scheduled hearing, the report shall be filed with the examiner and copies thereof shall be mailed to the applicant and made available for public inspection. Copies thereof shall be provided to interested parties upon payment of reproduction costs. In the event that information to be provided by the applicant or other parties outside of city control has not been provided in sufficient time for filing seven days in advance of the hearing, the examiner may reschedule the hearing and notify interested parties. (Ord. 550, 1990)

2.26.110 Public hearing.

A. Before rendering a decision or recommendation on any application, the examiner shall hold at least one public hearing thereon.

B. Notice of the time and place of the public hearing shall be given as provided in the ordinance governing the application. If none is specifically set forth, such notice shall be given no less than 10 days before the public hearing.

C. The examiner shall have the power to prescribe rules and regulations for the conduct of hearings under this chapter and also to administer oaths, and preserve order. (Ord. 821-03 § 1; Ord. 550, 1990)

Section 3. SMC Section 2.26.120 Amended. Section 2.26.120 of the Sultan Municipal Code is hereby amended to read as follows:

2.26.120 Examiner's recommendation or decision.

A. The examiner shall render a written recommendation or decision within 10 working days of the conclusion of a hearing, unless the applicant agrees to a longer period in writing. The recommendation or decision shall include at least the following:

~~A.~~1. Findings of fact and conclusions of law based upon and supported by the record;

~~B. A~~2. A recommendation or decision on the ~~applicant~~application to grant, deny, or grant with such conditions, modifications, and restrictions as the examiner finds reasonable to make the application compatible with its environment, ~~zoning ordinance, comprehensive plan,~~the Sultan Municipal Code, the City of Sultan Comprehensive Plan, other official policies and objectives, and land use regulatory enactments. Examples of the kinds of conditions, modifications, and restrictions ~~which~~that may be imposed include, but are not limited to~~,~~ additional setbacks, screenings in the form of fencing or landscaping, easements, dedications, or additional right-of-way and performance bonds;

~~C. No application for a variance shall be granted unless the examiner finds:~~

~~1. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which their application was filed is located; and~~

~~2. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated; and~~

~~3. That such variance is necessary:~~

~~a. Because of special circumstances set forth in the findings relating to size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and~~

~~b. Because for reasons set forth in the findings, the variance as approved would contribute significantly to the improvement of environmental conditions, either existing or potentially arising from the proposed improvement;~~3. A statement of the date the recommendation or decision will become final.

~~D.~~B. 1. All decisions or recommendations of the hearing examiner are subject to reconsideration, unless reconsideration is waived. Reconsideration is waived unless within seven calendar days of the date of mailing of the decision or recommendation, the applicant, the city, or a party of record submits a written request for reconsideration in accordance with rules issued by the hearing examiner. Pending reconsideration by the hearing examiner, a decision or recommendation shall not be deemed final for the purpose of commencement of the period of time in which to commence an appeal. If reconsideration is waived because no timely request for reconsideration is made, the initial decision or recommendation of the hearing examiner,

subject to any right of appeal, shall be deemed final as of the eighth calendar day after the date of mailing of the decision or recommendation. If a timely request for reconsideration is made, the hearing examiner shall grant or deny reconsideration within 10 calendar days of the date of receipt of the request for reconsideration. All periods of time provided for in this code for ~~filing an appeal of a hearing examiner's decision, or for council consideration of a hearing examiner's recommendation, shall commence to run from the later of the eighth calendar day after mailing of the hearing examiner's decision or~~council consideration of a hearing examiner's recommendation shall commence to run from the later of the eighth calendar day after mailing of the hearing examiner's recommendation or the date of the hearing ~~recommendation or the date of the hearing examiner's order granting or denying reconsideration.~~

~~E. All fees associated with the reconsideration shall be set by council resolution.~~

~~F. A statement of the date the decision will become final unless appealed, together with a description of the appeal procedure. (Ord. 764-01; Ord. 550, 1990)~~

examiner's order granting or denying reconsideration.

2. All fees associated with the reconsideration shall be set by council resolution.

Section 4. SMC Section 2.26.130 Amended. Section 2.26.130 of the Sultan Municipal Code is hereby amended to read as follows:

2.26.130 Notice of examiner's recommendation or decision.

Not later than three working days following the rendering of a written recommendation or decision, copies thereof shall be mailed to the applicant and to other parties of record in the case. "Parties of record" shall include the applicant and all other persons who specifically request notice ~~of decision~~ by signing a register provided for such purpose at the public hearing, or otherwise provide written request for such notice.

Section 6. SMC Section 2.26.140 Amended. Section 2.26.140 of the Sultan Municipal Code is hereby amended to read as follows:

2.26.140 Appeal from examiner's decision.

Where the examiner's decision is final and conclusive it may be appealed to Superior Court by a party with standing in accordance with the procedures of Chapter 36.70C RCW.

~~A. The grounds for filing an appeal of an examiner's decision shall be limited to the following:~~

~~1. Newly discovered evidence which is material to the examiner's decision and which could not reasonably have been produced at the examiner's hearing;~~

~~2. The examiner exceeded his jurisdiction;~~

~~3. The examiner failed to follow the applicable procedure in reaching his decision;~~

~~4. The examiner committed an error of law or misinterpreted the applicable zoning ordinance, comprehensive plan, provisions of the city's code or other city or state law or regulation; or~~

~~5. The examiner's findings and conclusions are not supported by the record.~~

~~B. 1. Where the examiner's decision is final and conclusive with right of appeal to the council, any such appeal shall be filed by the applicant, a department of the city, or other aggrieved person or agency with the city clerk/treasurer within 10 calendar days following the rendering of the examiner's decision pursuant to SMC 2.26.120. In computing the time in which to file an appeal with the council, the date the examiner's decision is rendered shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or a legal holiday.~~

~~2. Appeals filed with the city clerk/treasurer shall be in writing, shall contain a detailed statement of grounds for appeal and the facts upon which the appeal is based, and shall be accompanied by a fee of $50.00; provided, that such appeal fee shall not be charged to a department of the city or to other than the first appellant. All council proceedings shall be limited to those matters expressly raised in a timely written appeal or appeals.~~

~~3. The timely filing of an appeal shall stay the effective date of the examiner's decision until such time as the appeal is adjudicated by the council or withdrawn.~~

~~C. 1. If the appeal is to the council, the timely filing of an appeal shall stay the effective date of the examiner's decision until such time as the appeal is adjudicated or withdrawn.~~

~~2. Within seven calendar days following the timely filing of an appeal with the city clerk/treasurer, notice thereof and of the date, time and place for council consideration shall be mailed by the clerk's office to the applicant, to the examiner and to all other parties of record. Such notice shall additionally indicate the deadline for submittal of written comments as prescribed in SMC 2.26.150.~~

~~D. Where the examiner's decision is final and conclusive, with right of appeal to court, the procedures for appeal are as set out in the underlying ordinance or statute governing the land use permit or other quasi-judicial hearing. (Ord. 550, 1990)~~

Section 7. SMC Section 2.26.150 Amended. Section 2.26.150 of the Sultan Municipal Code is hereby amended to read as follows:

2.26.150 Council consideration.

An examiner's recommendation shall come to Council for a final decision in accordance with the procedures in the underlying ordinance or statute governing the land use permit or other land use application.

~~A. An examiner's decision which has been timely appealed pursuant to SMC 2.26.140 shall come on for council consideration in open public meeting no sooner than 21 nor longer than 35 calendar days from the date the appeal was filed. The council shall consider the matter based upon the record before the examiner, the examiner's decision, the written appeal statement and any written comments received by the council before closure of the city clerk/treasurer's office seven days prior to the public meeting date set for council consideration.~~

~~B. At the public meeting, the council may concur with the findings and conclusions of the examiner and affirm the examiner's decision; remand the matter to the examiner for further proceedings in accordance with the council's findings and conclusions; or the council may determine to hear the appeal at public hearing. In those instances in which the council affirms the examiner's decision or remands the matter to the examiner, the council's decision shall be reduced to writing and entered into the record of the proceeding within 15 days of the public meeting. Copies of the decision shall be mailed to all parties of record.~~

~~C. In those instances in which the council determines to conduct a public hearing, notice of the hearing shall be given by publication in the city newspaper no less than 10 days prior to the date set for the hearing and written notice shall also be given by the council by mail to all parties of record before the hearing examiner.~~

~~D. All council hearings conducted pursuant to this section shall be de novo and shall be limited to those matters raised in the appeal. The council shall consider the appeal based upon the record before the examiner and all written and oral testimony presented at the council hearing. All testimony at any public hearing shall be taken under oath.~~

~~E. At the conclusion of the public hearing, the council shall enter its decision which shall set forth the findings and conclusions of the council in support of its decision. The council may adopt any or all of the findings or conclusions of the examiner which support the council's decision. The council may affirm the decision of the examiner, reverse the decision of the examiner either wholly or in part, or may remand the matter to the examiner for further proceedings in accordance with the council's findings and conclusions.~~

~~F. The council's decision shall be reduced to writing and entered into the record of the proceedings within 15 days of the conclusion of the hearing. Copies of the decision shall be mailed to all parties of record. (Ord. 550, 1990)~~

Section 8. SMC Section 2.26.160 Repealed. Section 2.26.160 of the Sultan Municipal Code is hereby repealed in its entirety.

~~**2.26.160 Effect of council action.**~~

~~The council's decision to affirm an examiner's decision or remand a matter to the examiner pursuant to SMC 2.26.150(B), or the council's decision after public hearing on an~~

~~appeal, shall be final and conclusive with right of appeal to the Superior Court of Snohomish County by writ of certiorari, writ of prohibition or writ of mandamus within 15 calendar days of the council's decision. The cost of transcription of all records ordered certified by the court for such review shall be borne by the applicant for the writ. (Ord. 550, 1990)~~

2.26.180 Local improvement district assessment roll hearings.

A. As authorized by RCW 35.44.070, the city council hereby provides for delegating, whenever directed by majority vote of the city council, the duty of conducting public hearings for the purpose of considering and making recommendations on final assessment rolls and the individual assessments upon property within local improvement districts to a hearing examiner appointed under this section, and the hearing examiner is directed to conduct such hearings and make those recommendations when thus authorized by the city council.

B. All objections to the confirmation of the assessment roll shall be in writing and identify the property, be signed by the owners and clearly state the grounds of the objection. Objections not made within the time and in the manner prescribed and as required by law shall be conclusively presumed to have been waived.

C. The hearing examiner shall conduct the hearing to be commenced at the time and place designated by the city council, cause an adequate record to be made of the proceedings, and make written findings, conclusions and recommendations to the city council following the completion of such hearings, which may be continued and recontinued as provided by law whenever deemed proper by the hearing examiner, and the city council shall either adopt or reject the recommendations of the hearing examiner.

D. The recommendations of the hearing examiner shall be that the city council correct, revise, lower, change or modify the roll or any part thereof, or set aside the roll in order for the assessment to be made de novo, or that the city council adopt or correct the roll or take other action on the roll as appropriate, including confirmation of the roll without change. The recommendations of the hearing examiner shall be filed with the city clerk and be open to public inspection. All persons whose names appear upon the recommended assessment roll who timely filed written objections to their assessments shall receive mailed written notification of their recommended assessments.

E. Any persons who shall have timely filed objections to their assessments may appeal the recommendations of the hearing examiner regarding their properties to the city council by filing written notice of such appeal with the city clerk within 10 calendar days after the date of mailing of the hearing examiner's recommendations.

F. The appeal shall be based exclusively upon the record made before the hearing examiner and shall be considered by the city council at a public meeting. No new evidence may be presented. Arguments on appeal shall be either oral or written as the city council may order.

G. The city council shall adopt or reject the recommendations of the hearing examiner at a public meeting, after considering any appeals, and shall act by ordinance in confirming the final assessment roll.

H. Any appeal from a decision of the city council regarding any assessment may be made to the superior court within the time and in the manner provided by law.

I. The procedures set forth in this section are independent of and alternative to any other hearing or review processes heretofore or hereafter established by the city, and shall govern the conduct and review of final assessment hearings conducted before hearing examiners and related proceedings when authorized by the city council. (Ord. 775-01 § 1)

Section 9. SMC Section 2.26.190 Adopted. A new Section 2.26.190 of the Sultan Municipal Code is hereby adopted to read as follows:

2.26.190 Variance criteria.

No application for a variance shall be granted unless the examiner finds:

A. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which their application was filed is located; and

B. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated; and

B. That such variance is necessary:

1. Because of special circumstances set forth in the findings relating to size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and

2. Because for reasons set forth in the findings, the variance as approved would contribute significantly to the improvement of environmental conditions, either existing or potentially arising from the proposed improvement.

Section 10. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 11. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE _____DAY OF _____, 2008.

CITY OF SULTAN

_____
Carolyn Eslick, Mayor

ATTEST/AUTHENTICATED:

_____
Laura Koenig, City Clerk

Approved as to form:

_____
Kathy Hardy, City Attorney

Filed with the City Clerk:
Passed by the City Council:
Date of Publication:
Effective Date: