

SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET

ITEM NO: C-11

DATE: December 11, 2008

SUBJECT: CUP-06-005
Hoot Owl Mini Mart Auto Lube

CONTACT PERSON: Robert Martin, Community Development Director

RCM

ISSUE: Authorize the Mayor to sign resolution 08.34 (**Attachment A**) approving a conditional use permit (Revised CUP-06-05) to construct the Hoot Owl Mini-Lube and denying the variance to flood damage protection standards.

STAFF RECOMMENDATION:

Staff recommends that Council authorize the Mayor to sign Resolution 08.34: A Resolution of the City of Sultan approving the revised Chris Damianidis Conditional Use Permit to construct Hoot Owl Mini-Lube; city of sultan file number no. CUP06-005 and denying the requested flood damage protection variance

SUMMARY:

This is a consent agenda item because the applicant is not planning to appeal the Hearing Examiner recommendation. Under Sultan Municipal Code (SMC) 21.04.030, 16.120.050, and 16.120.080, a closed record hearing is not required to adopt this recommendation of the Hearing Examiner. As per these code provisions, the City Council must receive and review the recommendation of the Hearing Examiner and make the final decision on the application.

The Hearing Examiner recommended approval of the proposed conditional use application (as revised from original approval of May 24, 2007) and recommended denial of the proposed flood damage variance that accompanied the revised application. The Hearing Examiner's recommendation (**Attachment D**) was issued on October 29, 2007.

Staff has found that the recommendation of the Hearing Examiner was not forwarded to the Council for final action. The SMC at 21.04.060 provides for a 1-year expiration of a Conditional Use after Council approval. This expiration clock cannot be started until Council acts on the final approval.

It is appropriate to finalize Council action on this recommendation. Council action will give the applicant one year from final approval to act on the approval or to let it expire.

HISTORY OF PRIOR ACTION:

- October 11, 2006: Initial application received
- December 26, 2006: Determination of Completeness Issued

- March 13, 2007: Staff report constructed and forwarded to Hearing Examiner
- April 24, 2007: Hearing Examiner conducts hearing and recommends approval of initial application with conditions.
- May 24, 2007: City Council conducts Closed-Record Hearing on Hearing Examiner recommendation.
- May 24, 2007: City Council adopts **Resolution 07-01 (Attachments B & C)** approving the application and the Hearing Examiner conditions of approval.
- July 10, 2007: Applicant files an Amendment to approved Conditional Use Application and files a Request for Variance to Flood Damage Protection Standards.
- August 17, 2007: Staff report forwarded to Hearing Examiner. Staff recommends approval of the amended development plan and approval of the variance to flood protection standards.
- October 19, 2007: Hearing Examiner hearing on Amended Application and Variance Request.
- October 29, 2007: Hearing Examiner Recommendation issued (**Attachment D**). Recommendation to: **Approve** revised Conditional Use Application, and **Deny** flood damage variance request. *(This is the recommendation that should have been brought back to the Council for action as provided in SMC 21.04.030, 16.120.050, and 16.120.080. but was not brought to Council due to staff changes during this period.)*
- October 24, 2008: Letter from applicant agreeing to accept Hearing Examiner conditions and denial of the requested variance, and to conform to the design standards established under the May, 2007 approval. The letter also requests time to complete design and secure permits based on revised application approved by the Hearing Examiner on October 29, 2007.

ALTERNATIVES:

As provided in SMC 21.04.030, the Council can approve with the recommended conditions and findings; approve with additional or modified conditions; or reverse the Hearing Examiner recommendations subject to Council making its own findings.

The applicant's October 24, 2008 letter (**Attachment E**) proposes to complete design of the building within three months of Council approval in conformance with the design standards included in the original May, 2007 approval, and to secure permits within 6 months of Council approval. The code provides one year to secure permits, and staff proposes that the applicant have the full year as provided by code.

The letter also indicates that the applicant is considering an alternative to a Mini-lube as the business to occupy the structure. The Hearing Examiner's conditions include authorization for the Director to administratively approve minor revisions to the approved project site plan. If the plan substantially conforms to the approval issued by the Hearing Examiner and adopted by the Council, the Director will conduct an administrative review and approval. If the plan is substantially different from the approved plan, the Director will consult with the City Attorney and the Hearing Examiner to determine the appropriate level of review.

FISCAL IMPACT:

Acceptance of Hearing Examiner recommendation will allow one year for the applicant to secure a building permit and construct a new business facility in the community. If successful, this will add to permit revenue for 2009 and ongoing tax revenue.

RECOMMENDED ACTION:

Move to adopt Resolution No. 08-34, accepting Hearing Examiner recommendation of October 29, 2007, and approving amended CUP-06-05, and denying requested flood damage protection variance.

ATTACHMENTS:

Attachment A: Resolution No. 08-34

Attachment B: Excerpt of City Council Minutes; May 24, 2007.

Attachment C: Resolution No. 07-11

Attachment D: Hearing Examiner Recommendation on Revised Application and Variance request.

Attachment E: Applicant Letter, October 24, 2008

CITY OF SULTAN
Sultan, Washington
RESOLUTION NO. 08-34

A RESOLUTION OF THE CITY OF SULTAN
APPROVING THE REVISED
CONDITIONAL USE PERMIT TO CONSTRUCT HOOT OWL MINI-LUBE,
CITY OF SULTAN FILE NUMBER NO. CUP06-005,
AND
DENYING THE REQUESTED FLOOD DAMAGE PROTECTION VARIANCE

WHEREAS, Chris Damianidis submitted an Application to the City of Sultan on October 11, 2006 for Approval of a Condition Use Permit (CUP) to construct a mini-lube with small restaurant attached; and

WHEREAS, the City Council, upon recommendation of the Hearing Examiner, on May 24, 2007, adopted Resolution 07-01 approving said CUP; and

WHEREAS, the applicant, on July 10, 2007, filed an amendment to the approved CUP and also filed a request for a variance from the applicable flood protection standards; and

WHEREAS, The Planning Staff, on August 17, 2007, issued a Staff Report and recommendation of approval with conditions for both the amendment to the approved CUP and the Hoot Owl Min Lube proposal and the flood protection standards; and

WHEREAS, the Hearing Examiner conducted an Open Record Public Hearing on the proposal on October 19, 2007; and

WHEREAS, the Hearing Examiner on October 29, 2007 made Findings of Fact and Conclusions based upon the testimony and evidence submitted at the open record hearing and the Examiner's site view, and issued a recommendation to approve the Amended Conditional Use Permit subject to 5 conditions, and recommended denial of the requested variance to flood damage protection standards; and

WHEREAS, the City Council at a regular meeting held on December 11, 2008 accepted the Hearings Examiner's report and recommendation, including the Findings of Fact and Conclusions, and Approved the Conditional Use Application Number CUP06-005 with the 5-Conditions recommend by the Hearing Examiner; and accepted the Hearing Examiner's recommendation to deny the requested variance to flood damage protection standards;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON AS FOLLOWS:

Section 1. The City Council adopts the Hearing Examiner's Findings of Fact and Conclusions of Law and finds that the Revised Damianidis/Hoot Owl Mini-Lube Conditional Use application filed on July 10, 2007, satisfies the provisions of SMC Chapter 21.04.050.

Section 2. The Hearing Examiner's Recommendation contained five conditions, which are adopted as the conditions of approval.

Section 3. The Applicant, Chris Damianidis finds the conditions of approval for their Conditional Use Permit File Number CUP 06-05 acceptable and did not request reconsideration of the Hearings Examiner's recommendation.

Section 4. The Conditional Use Permit for Chris Damianidis, CUP05-006 is **Approved** subject to the conditions imposed.

Section 5. The Hearing Examiner's Recommendation to deny the requested Flood Damage Reduction Variance is adopted, and the requested Variance is **Denied**.

PASSED by the City Council and **APPROVED** by the Mayor this 11th day of December, 2008.

CITY OF SULTAN

By _____
CAROLYN ESLICK, MAYOR

Attest:

By _____
LAURA KOENIG, CITY CLERK

Approved as to form:

By _____
MARGARET KING, CITY ATTORNEY ~~Approved as to form:~~

By _____
THOM GRAAFSTRA, CITY ATTORNEY

CITY OF SULTAN COUNCIL MEETING – May 24, 2007

Veterans Remembrance Emblem Grant – Bid Award: The City of Sultan received a grant in the amount of \$4,000 to purchase a memorial granite wall for the All Veterans Memorial. This is a Public/Private Partnership with the Sultan Sportsmen Club and they have agreed to pay any expenses above the \$4,000 grant received from the Veterans Remembrance Emblem Program, including installation of the wall and engraving the veteran's names. The City received three bids for the granite wall and has recommended the bid be awarded to the low bidder, Jelinek Monuments. On a motion by Councilmember Blair, seconded by Councilmember Seehuus, the bid for the memorial wall was award to Jelinek Monuments and staff was directed to work with the Sultan Sportsmen Club on the installation. All ayes.

Cemetery Entry Sign and Niche Wall: Staff requested authorize to move forward with the process of providing ash inurnment in the Sultan Cemetery with collunariums and replacing the aging painted wood entrance signs, with a iron signage in an archway over the entrance. Councilmember Flower has donated the design work for the sign. On a motion by C/M Blair, seconded by C/M Seehuus, the Council accepted the donation from Jim Flower LLC for the design of the sign and authorized staff to call for bids for two collunariums for ash inurnment and new signage at the entrance of the Sultan Cemetery. All ayes.

Membrane (MBR) Supplier Selection: At the May 10, 2007 Council meeting, the Council rejected all MBR proposals and passed Resolution 07-10 declaring the MBR system a Special Facilities Equipment system. This waived the requirement for competitive bidding and allowed City staff to enter into discussions with suppliers. A workshop was held to evaluate MBR suppliers as outlined in the RFP (Request for Proposals). Based on the evaluations, staff has recommended that the city enter into negotiations with Enviroquip for procurement of MBR equipment and services. On a motion by Councilmember Slawson, seconded by Councilmember Seehuus, based on the evaluation criteria, the City selected Enviorquip to provide MBR equipment and service and authorized staff to negotiate a contract. All ayes.

Resolution 07-11 Hoot Owl Mini Lube: The Closed Record Hearing on the proposed Mini Lube at the Hoot Owl was held earlier in the meeting. Staff recommends approval of the requested Conditional Use Permit to construct a Mini-Lube (with a small restaurant attached) on the site of the Hoot Owl Mini-Mart. On a motion by Councilmember Seehuus, seconded by Councilmember Blair, Resolution 07-11 was adopted. All ayes.

DISCUSSION ITEM

Stormwater Utility Update: Deborah Knight provided an update on the stormwater utility and the process to determine a fee schedule. This will be an enterprise fund and will need to be self-supporting. A small citizen has been formed to develop a budget and determine revenue needs. The group has recommended using an ERU (equivalent resident unit) method to set rates. The council will need to make decisions regarding commercial property, exempt property, detention ponds, credits and billing services.

Budget Workshop Agenda: Deborah Knight, City Administrator, briefly discussed the agenda items for the Budget workshop that is scheduled for June 23, 2007. Staff is looking for feedback on the proposed discussion items and the key themes to center the budget around. The goal is to provide long term planning for the council and community. The five different themes include Economic Development, community vision, financial health, staff resources and strategic partnerships.

Attachment B

CITY OF SULTAN
Sultan, Washington
RESOLUTION NO. 07-11

**A RESOLUTION OF THE CITY OF SULTAN APPROVING THE
CHRIS DAMIANIDIS CONDITIONAL USE PERMIT TO CONSTRUCT MINI-
LUBE CITY OF SULTAN FILE NUMBER NO. CUP06-005**

WHEREAS, Chris Damianidis submitted an Application to the City of Sultan on October 11, 2006 for Approval of a Condition Use Permit (CUP) to construct a mini-lube with small restaurant attached; and

WHEREAS, the City Planner issued a letter of complete Application to Paul Cavassa, project engineer, on December 29, 2006; and

WHEREAS, the Responsible Official for the City issued a Determination of Non-Significance (DNS) for the proposal on January 19, 2007 and no appeals to that Threshold Determination were received by the City; and

WHEREAS, The Planning Staff, on March 13, 2007 issued a Staff Report and recommendation of approval with conditions for the Hoot Owl Min Lube proposal; and

WHEREAS, The Design Review Board conducted a meetings on December 15, 2005 and again on February 9, 2006 to review the Hoot Owl Min-Lube Conditional Use Application and recommend approval of the project: and

WHEREAS, the Hearing Examiner conducted an Open Record Public Hearing on the proposal on April 24, 2007; and

WHEREAS, the Hearing Examiner on April 24, 2007 made Findings of Fact and Conclusions based upon, the testimony and evidence submitted at the open record hearing and the Examiner's site view, and issued a recommendation to approve the Conditional Use Permit to construct a Mini-Lube subject to 5 conditions; and

WHEREAS, the City Council at a regular meeting held on May 24, 2007 accepted the Hearings Examiner's report and recommendation, including the Findings of Fact and Conclusions, and Approved the Conditional Use Application Number CUP06-005 with the 5-Conditions recommend by the Hearing Examiner; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON AS FOLLOWS:

Section 1. The City Council adopts the Hearing Examiner's Findings of Fact and Conclusions of Law and finds that the Damianidis/Hoot Owl Mini-Lube Conditional Use application satisfies the provisions of SMC Chapter 21.04.050..

Section 2. The Hearing Examiner's Recommendation contained five conditions, which are adopted

Attachment C

**BEFORE the HEARING EXAMINER of the
CITY of SULTAN**

RECOMMENDATION

FILE NUMBER: CUP06-005

APPLICANT: Chris Damianidis

TYPE OF CASE: Concurrent: 1) Flood damage prevention variance to reduce required floodproofing from 1.6 feet to 0.1 feet; and 2) Revisions to the May 24, 2007, Conditional Use Permit for a Mini-Lube (with small restaurant attached) on the site of the Hoot Owl Mini-Mart

STAFF RECOMMENDATION: Approve subject to conditions

SUMMARY OF RECOMMENDATION: DENY flood damage prevention variance; GRANT Conditional Use Permit revisions

DATE OF RECOMMENDATION: October 29, 2007

INTRODUCTION

Chris Damianidis (Damianidis), 601 Stevens Avenue, Sultan, Washington 98294, seeks: 1) a flood damage prevention variance from Sultan Municipal Code (SMC) 17.08.110(B)(2)(a) to reduce required floodproofing from 1.6 feet to 0.1 feet above the base flood level; and 2) revisions to the May 24, 2007, Conditional Use Permit (CUP) for a Mini-Lube (with small restaurant attached) on the site of the Hoot Owl Mini-Mart. Damianidis filed the revised Master Land Use Application on July 13, 2007. (Exhibits 12.1 and 17¹) The Sultan Department of Community Development (DCD) deemed the revised application complete as of August 10, 2007. (Exhibit 17)

The subject property is located at 601 – 613 Stevens Avenue (SR 2) in downtown Sultan.

The Sultan Hearing Examiner (Examiner) viewed the subject property on April 24, 2007.

¹ Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Recommendation is based upon all documents in the record.

Attachment D

HEARING EXAMINER RECOMMENDATION

RE: CUP06-005 (Hoot Owl Mini-Lube Floodproofing Variance and CUP Revision)

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The Examiner held an open record hearing on the flood damage prevention variance and CUP revisions on October 19, 2007. DCD and Damianidis gave notice of the hearing as required by the SMC. (Exhibits 14, 19, and 20)

The following exhibits were entered into the hearing record:

- Exhibit 1: Departmental Staff Report with Attachments 1.A – 1.K
- Exhibit 2: Site Plan package (5 sheets)
- Exhibit 3: Landscape plans and building elevations (6 sheets)
- Exhibit 5: Sultan Ordinance No. 852-04
- Exhibit 4: Design Review Board minutes of February 9, 2006
- Exhibit 6: Current water availability letter dated April 24, 2007
- Exhibit 7: Current sewer availability letter dated April 24, 2007
- Exhibit 8: Memorandum regarding permissibility of un-floodproofed lube pits within a 100 year flood plain dated May 1, 2007
- Exhibit 9: Affidavit of Publication, April 12, 2007
- Exhibit 10: Examiner Recommendation, May 4, 2007
- Exhibit 11: Resolution No. 07-11, May 24, 2007, granting application CUP06-005 subject to conditions
- Exhibit 12: Revised application materials, submitted July 13, 2007
- Exhibit 13: Departmental Staff Report, August 17, 2007
- Exhibit 14: Public hearing notices for October 9 and 19, 2007
- Exhibit 15: Letter, Heydricks to Hearing Examiner, October 5, 2007
- Exhibit 16: Affidavit of Mailing, Hearing notice
- Exhibit 17: Notice of Revised Application, September 14, 2007
- Exhibit 18: Affidavit of Publication, September 14, 2007
- Exhibit 19: Affidavit of Publication, September 21, 2007
- Exhibit 20: Affidavit of Publication, October 5, 2007
- Exhibit 21: Letter, Fallgatter to Hearing Examiner, October 19, 2007

The action taken herein and the requirements, limitations and/or conditions recommended for imposition by this recommendation are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take and recommend pursuant to applicable law and policy.

ISSUES

Do the revisions alter the application's compliance with applicable criteria for CUP approval? Does the proposal meet the special criteria for relaxation of flood damage prevention requirements?

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FINDINGS OF FACT

1. The subject property is a rectangular assemblage of 8+ narrow lots bordered on the north by Main Street, on the south by SR 2 (a.k.a. Stevens Avenue), on the west by 6th Street, and on the east by a building containing a combination single family residence (facing Main Street) and antiques store (facing SR 2). The site is 100 feet in north-south dimension and approximately 280 feet in east-west dimension and encompasses approximately 0.64 acres. The site contains (going from west to east) the Hoot Owl market (with fuel dispensing pump islands), a multi-bay car wash, and the Trackside Pizza & Subs restaurant (located in the far southeast corner of the site). The buildings overlap several internal lot lines. A portion of the restaurant and all seven of its parking spaces are located within the SR 2 right-of-way. (Exhibit 12.3)

Damianidis proposes to demolish the restaurant building and construct a two-bay mini-lube facility, small attached restaurant (not drive-in), and three parking stalls, all on about the east 25% of the site. (Exhibits 3 and 12.3 and testimony)

2. On May 4, 2007, the Examiner issued a Recommendation to the City Council (Council) for approval, subject to conditions, of a CUP for the mini-lube.² (Exhibit 10) On May 24, 2007, the Council granted the requested CUP, adopting all of the Examiner's Findings of Fact, Conclusions, and Conditions. (Exhibit 11: Resolution No. 07-11)
3. The subject property lies within the delineated flood plain of the Sultan River for the base flood (the so-called 100 year flood). The calculated base flood level across the subject property is 115 feet NGVD. (Exhibit 1.F, p. 4) Present site elevations range from approximately 113 to 114 feet NGVD; the mini-market's floor is at elevation 114.66 feet NGVD. (Exhibit 1.3, Sheet C-2)

City regulations require the proposed building to either have its "lowest floor, including basement, elevated 1.6 feet or more above the base flood elevation, ... or ... Be floodproofed to a point 1.6 feet or more above the base flood elevation so that the structure is watertight with walls substantially impermeable to the passage of water". [SMC 17.08.110(B)(2) and (2)(a)] The originally proposed site plan did not reflect the required floodproofing: The plans showed a 113.5 foot floor elevation. (Exhibit 2) CUP Condition 2 requires floodproofing in accordance with the SMC: "The entire building, including the service bay area, shall have its lowest floor elevated 1.6 feet or more above the base flood elevation as required by SMC 17.08.110(B)(2)." (Exhibit 10, p. 13)

4. Damianidis has determined that the required floodproofing would necessitate approach ramp grades of 10% - 20% to both the mini-lube and restaurant and a four foot high retaining wall along the east

² The restaurant is a permitted use in the applicable zone. (Exhibit 10, Finding of Fact 2 and Conclusion 1)

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property line. (Exhibit 12.2, unnumbered p. 1) The building would not be ADA accessible with such approach grades. (Exhibit 12.2, unnumbered p. 2) Damianidis, therefore, seeks relief from the floodproofing requirement.

5. Damianidis proposes to construct the lowest (slab on grade) floor of the mini-lube and restaurant at elevation 115.1 feet NGVD, 0.1 foot (1.2 inches) above the base flood elevation of 115.0 feet NGVD rather than the 1.6 feet or more above the base flood elevation as required by SMC 17.08.110(B).

In addition, Damianidis requests approval of a number of relatively minor changes to the approved site plan (Exhibit 2). The changes are depicted on Exhibit 12.3. He proposes to shift the building one foot to the west to accommodate a two foot high retaining wall with a four foot high chain link fence along the east property line. A finished floor elevation of 115.1 feet NGVD will be ADA accessible from both Main Street and SR 2. An overlay of the existing pavement from the proposed building to the easterly vacuum island (in front of the car wash) is proposed to minimize finished surface grades on the west side of the building site. The proposed additional catch basin has been shifted to 7 feet from the north property line to minimize the approach grade from Main Street to the mini-lube doors. The proposed handicap parking stall has been moved next to the building sidewalk to improve access. Finally, the parking stall nearest Main Street has been designated for compact car use to improve access and reduce traffic conflict.

6. Because the underlying geologic formation is relatively sandy, it can be expected to become saturated during flood conditions. The bottom of the lube pit will be about six feet below the finished floor level, or at approximately elevation 109 feet NGVD. Damianidis has made two offers with respect to the lube pits. First, they will be constructed of waterproof concrete to prevent infiltration of ground water during high water events. Second, all petroleum, oil, and lubricant (POL) materials will be removed from the pit and stored in containers above elevation 116.6 feet NGVD. (Exhibit 12.2, unnumbered pp. 1 and 2, and testimony)
7. Sultan's State Environmental Policy Act (SEPA) Responsible Official issued a threshold Determination of Nonsignificance (DNS) for Damianidis' proposal on January 19, 2007. (Exhibit 1.G) The DNS was not appealed. (Exhibit 1) DCD has used that threshold determination for the current proposal. (Exhibit 13, pp. 10 and 11)
8. DCD recommends approval of the flood damage prevention variance and of the minor site plan revisions. DCD's recommended conditions omit present Condition 1 (which identifies Exhibits 2 and 3 as the approved CUP plans), revise Condition 2 to require floodproofing to elevation 115.1 feet NGVD, rearrange the remaining Conditions, and add two conditions which essentially recite the language of SMC 17.08.100(C) and (D). (Exhibit 13)
9. The Heydricks and Josie Fallgatter oppose the floodproofing variance. The Heydricks argue that petrochemical pollutants swept up in the base flood would harm the nearby Sultan and Skykomish

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Rivers, which provide critical habitat to threatened and endangered species such as Chinook salmon and Bull trout. In the Heydricks' view, no relaxation of floodproofing requirements should be granted for such a use. (Exhibit 15)

Fallgatter echoes the Heydricks' argument and also argues that the variance fails to comply with CUP criteria in SMC 21.04.050, conflicts with Comprehensive Plan provisions, fails to comply with flood damage reduction principles, is inconsistent with the underlying purpose of SEPA, and "simply defies common sense." (Exhibit 21)

10. Any Conclusion deemed to be a Finding of Fact is hereby adopted as such.

PRINCIPLES OF LAW

Authority

CUPs require a pre-decision open record hearing following which the hearing body forwards a recommendation to the Sultan City Council (Council) for final action. [SMC 16.120.050 and 21.04.030] The Examiner is charged with the responsibility and authority to conduct the required open record hearing. [SMC 16.120.050]

Chapter 17.08 SMC, Flood Damage Prevention, contains provisions for issuance of variances from its provisions. [SMC 17.08.090 and .100] The Examiner is charged with the responsibility and authority to conduct open record hearings on variance applications. [SMC 2.26.090]

Review Criteria

The review criteria for CUPs are set forth at SMC 21.04.050:

- 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 possible adverse impacts, which the proposed use may have on the area in which it is located.

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Variances from the Flood Damage Prevention regulations are allowed subject to compliance with SMC 17.08.090 and .100. Both code sections are set forth below in their entirety:

17.08.090 Variance procedures.

A. Variances may be issued for new construction and substantial improvements to be erected on a lot one-half acre or less in size if it is contiguous to and surrounded by lots with existing structures constructed below the base flood level; provided, that all items contained in subsections (C)(1) through (9) of this section have been fully considered.

B. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places without regard to the procedures set forth in the remainder of this section, and provided the proposed reconstruction, rehabilitation, or restoration will not result in the structure losing its historical designation.

C. In passing upon such applications, all technical evaluations, all relevant factors, and all standards specified in other sections of these performance standards shall be considered, as well as:

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger to life and property due to flooding or erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
6. The relationship of the proposed use to the comprehensive plan to that area;
7. The safety of access to the property in times of flood for ordinary and emergency vehicles;
8. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and
9. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, electrical, water systems, streets, and bridges.

D. Upon consideration of, but not limited to, the factors listed above, conditions may be attached to the granting of variances as is deemed necessary to further the purposes of these standards.

E. Variances shall not be issued within any designated floodway, if any increase in flood levels during the base flood discharge would result.

17.08.100 Conditions for variances.

A. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. In the case of an historic building, a determination must be made that the variance is the minimum necessary so as not to destroy the historic character, design, and designation of the building.

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B. Variances shall only be issued upon:

1. A showing of good and sufficient cause;
2. A determination that failure to grant the variance would result in exceptional hardship; and
3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create a nuisance, cause fraud on or victimization of the public, or conflict with existing laws.

C. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

D. The office of the building and zoning official shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

(Bold in original)

The Local Project Review Act [Chapter 36.70B RCW] establishes a mandatory “consistency” review for “project permits”, a term defined by the Act to include “building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan”. [RCW 36.70B.020(4)]

(1) Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review. The review of a proposed project’s consistency with applicable development regulations or, in the absence of applicable regulations the adopted comprehensive plan, under RCW 36.70B.040 shall incorporate the determinations under this section.

(2) During project review, a local government or any subsequent reviewing body shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations the adopted comprehensive plan. At a minimum, such applicable regulations or plans shall be determinative of the:

- (a) Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional and special uses, if the criteria for their approval have been satisfied;
- (b) Density of residential development in urban growth areas; and

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(c) Availability and adequacy of public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by [the Growth Management Act].

[RCW 36.70B.030]

Vested Rights

The vested rights doctrine applies to CUP applications:

Washington does adhere to the minority rule that a landowner obtains a vested right to develop land when he or she makes a timely and complete building permit application that complies with the applicable zoning and building ordinances in effect on the date of the application. Our vested rights rule also has been applied to building permits, conditional use permits, a grading permit, and a [shoreline management] substantial development permit.

[*Norco Construction v. King County*, 97 Wn.2d 680, 684, 649 P.2d 103 (1982), citations omitted] Therefore, this CUP application is vested to the regulations as they existed on December 26, 2006.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof.

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS

1. Only the mini-lube requires a CUP. Therefore, only the mini-lube is the subject of this permit process. The restaurant will not be addressed as it is a permitted use.
2. The current proceeding must address two separate, but obviously related issues: A series of relatively minor revisions to the approved CUP; and a flood damage prevention variance to reduce required floodproofing from 1.6 feet above base flood elevation to 0.1 feet above base flood elevation. The flood damage prevention variance is the prime driver of the request for the CUP revisions: Most of the requested changes seek to accommodate the increased building height necessitated by even the reduced floodproofing elevation proposed by Damianidis. Each element of the request is subject to distinctly different review criteria. Each will be evaluated separately, starting with the flood damage prevention variance request.

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3. The Conclusions in this decision are grouped by topic only for the reader's convenience. Such groupings do not indicate any limitation of applicability to the decision as a whole.

Flood Damage Prevention Variance

4. Subsections 17.08.090(A) and (B) SMC, quoted above, establish threshold standards for issuance of flood damage prevention variances: Subsection (A) provides that a flood damage prevention variance may only be issued for uses on properties containing 0.5 acres or less and then only if the surrounding, contiguous properties are developed with buildings constructed below the base flood level; Subsection (B) essentially excludes structures on the National Register of Historic Places from having to meet the Subsection (A) threshold. Subsection (B) has no bearing on this case: The proposed mini-lube is not on the National Register of Historic Places.
5. Damianidis' proposal does not meet the Subsection 17.08.090(A) threshold: The site is greater than 0.5 acres. A flood damage prevention variance may not even be considered.

Damianidis suggested that since the property is composed of 8+ lots and since the mini-lube is to be built on only the eastern 25% of the site, its site area is less than 0.5 acres. The problem with this approach is threefold. First, Damianidis included the entire site in his application, indicating that he intended it to be considered as one unit. Second, the site must be considered as a whole in order to meet code-required on-site parking requirements. (See Exhibit 10, Examiner Recommendation, Finding of Fact 6, adopted by the Council through Exhibit 11, Resolution No. 07-11.) Third, both the existing uses and the proposed new use overlap interior lot lines and overlap one another: The proposed use cannot be neatly separated from the others on the basis of the interior lot lines as its activity area does not follow any of the interior lot lines. (See Exhibit 12.3.)

6. The flood damage prevention variance analysis could stop here: Failure to pass the Subsection 17.08.090(A) threshold test bars consideration of the request. For the sake of completeness, however, the Examiner will evaluate compliance with the many approval criteria.
7. Chapter 17.08 SMC actually contains two separate sets of flood damage prevention variance review criteria. Subsection 17.08.090(A) SMC requires consideration of the nine items in SMC 17.08.090(C) and SMC 17.08.100(B) establishes three requirements for issuance of any flood damage prevention variance.³ DCD agrees with Damianidis' conclusion that the flood damage prevention variance complies with all ten of those criteria. While the Examiner agrees with much of

³ To the extent that Fallgatter suggests that a flood damage prevention variance is subject to the CUP review criteria in SMC 21.04.050 (Her letter (Exhibit 21) states "This variance request does not meet 4 of the 5 CUP review criteria of SMC 21.04.050"), she is mistaken. The requested revisions to the CUP are subject to review against the CUP criteria in SMC 21.04.050, but the flood damage prevention variance is subject to its own review criteria.

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REVISED CONDITIONS OF APPROVAL
CUP06-005
Damianidis/Hoot Owl Mini-Lube

This Conditional Use Permit is subject to compliance with all applicable provisions, requirements, and standards of the Sultan Municipal Code, standards adopted pursuant thereto, and the following special conditions:

1. Exhibits 2 and 3 or 12.3 and 3 constitute the approved site plans and landscape plan for this Conditional Use Permit, exclusive of first floor elevation notations. Minor revisions to approved Conditional Use Permit Site Plans may be approved administratively by DCD.
2. The entire building, including the service bay area, shall have its lowest floor elevated or be floodproofed to 1.6 feet or more above the base flood elevation as required by SMC 17.08.110(B)(2).
3. The developer shall adhere to all applicable codes, standards, and regulations in effect at the time of development, including but not limited to, the Sultan Municipal Code, the Stormwater Management Manual, the Uniform Building Code, and the Uniform Fire Code, as adopted by the City. The developer is responsible for obtaining any necessary State and Federal permits/approvals required for completion of the project.
4. Prior to Building Permit Issuance and commencement of construction:
 - A. The developer shall demonstrate that the proposed use for that lot conforms to all requirements of the Sultan Municipal Code and other standards and specifications that apply. Additionally, the developer shall apply to the development of this site all recommendations presented in the geotechnical engineering evaluation prepared for this proposal. (Exhibit J)
 - B. Construction Plans must be approved by the City of Sultan. The plans shall include, but not be limited to, storm drainage, potable water, sanitary sewer, roads, and other utilities to comply with the requirements of the Unified Development Code.
5. All surface water runoff from impervious surfaces shall be infiltrated, conveyed to an approved detention facility, or otherwise treated to protect water quality.

October 24, 2008

Mr. Bob Martin
Community Development
City Hall
Sultan WA 98294

Via: hand delivery

Mr. Martin: Thank you for your support and cooperation with the proposed new structure for the Damianidis Family property located adjacent to the Hoot Owl Chevron and Car Wash. We are the General Contractor providing design and construction services for Mr. John Damianidis. We are currently in process of refining the structures exterior to meet a new retail use versus the previously intended "Minute Lube" concept. It is our intent to keep the original look previously presented. This look will be similar to the City Hall construction, but will of course be on smaller scale with similar construction materials.

In regard to lengthening our request to keep this file open, we wish to confirm the following on the owners behalf; as acknowledged by his signature below:

-The recommendation from the City of Sultan hearing examiner dated 10-29-07 is accepted.

-There is no intent to appeal or request council to overturn the recommendation in regard to flood damage prevention. Please note we do intend to raise the building out of the flood plane and no longer have a need for underground oil pits; thereby minimizing understood construction costs.

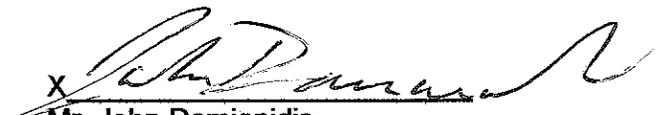
-We will also accept the proposed 3 month extension from ~~November 13 2008~~ ^{DECEMBER 2008} as opposed to the normal 12 month period. We do however request consideration to a 6 month period given the current volatility of the economy and markets.

-We will provide plans for approval within 3 months of ~~2-13-09~~ ¹²⁻¹³⁻⁰⁸

Again thank you for your assistance, preliminary renderings are included for your consideration. Our team looks forward to this project and working with the fine people of Sultan once again.

Sincerely,

Keith Bjella/ACA


Mr. John Damianidis

Attachment E