

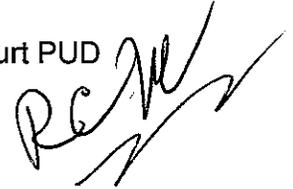
**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: C-10

DATE: March 12, 2009

SUBJECT: 12-month Extension Request: Preliminary Approval Caleb Court PUD

CONTACT PERSON: Robert Martin, Community Development Director



ISSUE:

Consider extension of Preliminary Approval of Caleb Court Planned Unit Development (PUD) for 12 months as provided by Sultan Municipal Code (SMC) 16.10.150(B).

STAFF RECOMMENDATION:

Staff recommends that Council adopt a motion to:

Approve the requested 12-month extension of Preliminary Approval of Caleb Court PUD, subject to the requirement that the final PUD submittal be accompanied by a separate document detailing the development standards and design modifications implemented to conform to the Hearing Examiner's Recommended Conditions of Approval FPPUD06-001, Caleb Court dated November 13, 2007, and requiring that the Final PUD be submitted to the City for review no later than April 10, 2010.

SUMMARY:

To continue permit process for a Planned Unit Development (Chapter 16.10 SMC), an applicant must submit an application for Final Approval within 12-months of Preliminary Approval. Caleb Court received Preliminary Approval on April 10, 2007.

The applicant, Joshua Freed, Managing Member of Freed Properties LLC, is requesting a 12-month extension of that deadline as provided by SMC 16.10.150B (**Attachment A**).

ANALYSIS:

1. Caleb Court was granted Preliminary Approval by the City Council on April 10, 2008 through Resolution 08-12 (**Attachment B**).
2. SMC 16.10.150 A. provides that an Application for Final PUD approval must be received within 12-months of Preliminary Approval. The request was submitted on February 19, 2009. This is within 1-year of the Preliminary Approval.
3. As provided by SMC 16.10.150 B. the Council may grant an extension if:
"... the City Council finds that such extension is consistent with the approval criteria required for each project and that no new information or change in circumstances justifies changing the city's previous preliminary PUD approval."
4. The Hearing Examiner issued a Recommendation for "Denial without prejudice" to the City Council on November 13, 2007. The Recommendation for denial listed the changes that would be required to bring the proposal into an approvable condition. To deny without prejudice means that the applicant is free to proceed with the application as long as the Conditions are met. **Attachment C** is the cover page of the Hearing Examiner's Report and the 4-pages of Conditions that the Examiner recommended to bring the proposal into compliance.

5. Council granted Preliminary Approval of Caleb Court Preliminary PUD through Resolution No. 08-12 (**Attachment B**) adopted on April 10, 2008. This Resolution accepted the Hearing Examiner's recommendations and conditioned the Preliminary PUD Approval to conform to the Hearing Examiner's Conditions as indicated in **Attachment C**.
6. Review of the Hearing Examiner's Recommendation, and Resolution 08-12, indicates that no substantive changes in circumstances justify changing the Preliminary Approval granted by the Council.

ALTERNATIVES:

1. Do not grant the requested extension. Based on findings that significant changes in circumstances warrant termination of the Preliminary Approval, Council can deny the request. This will require the applicant to submit a new application for Preliminary Approval if they wish to continue with the project.
2. Grant the requested 1-year extension with additional conditions. Based on findings that changes in circumstances warrant additional or altered conditions of approval, but not termination of the Preliminary Approval, the Council can offer modified conditions of approval. The applicant would then determine if those conditions are acceptable and that he is interested in continuing with the development.
3. Grant the requested extension under the current Preliminary Approval without additional conditions. This will authorize the developer to submit a final application under the conditions of Resolution 08-12, no later than July 13, 2009.

FISCAL IMPACT:

There is no fiscal impact related to an extension if there are no changed conditions that warrant additional conditions on the Preliminary Approval. Fiscal impacts of changed conditions of approval would have to be determined once Council made such changes.

ATTACHMENTS:

Attachment A: February 19, 2009 Request for Extension, Letter from Freed Properties
Attachment B: Council Resolution No. Resolution No. 08-12, April 10, 2007
Attachment C: Hearing Examiner Recommendation to Council, November 13, 2007

FREED|LLC PROPERTIES

February 19, 2009

Joshua Freed
Managing Member
Freed LLC
14704 100th Ave NE
Bothell, WA 98011

Robert Martin
Director of Development
City of Sultan
319 Main Street
Sultan, WA 98294

Dear Mr. Martin et al,

I am writing to ask for an extension to my approvals for Caleb Court PUD off of High Street. The tax parcels involved are 28083200300300 and 28083200312600.

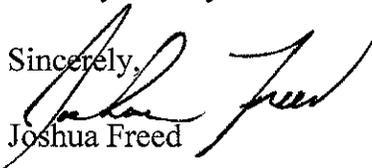
Due to economic conditions we are not able to start the project at this time. We plan to develop the property and do not want to loose the opportunity to be part of Sultan's future.

I would appreciate the City's support and understand section 16.10.150 gives the council the ability to approve a one-year extension to my approvals.

If the city is considering giving developers more than one-year extension, I would certainly appreciate such consideration. My PUD meets city code requirements for lot size, sidewalks, etc. We took time to work through two issue with connectivity and street length. Our street design to connect to future development has pleased the neighbors and the city.

Thank you for your consideration.

Sincerely,


Joshua Freed

Attachment A

CITY OF SULTAN

Sultan, Washington

RESOLUTION NO. 08-12

A RESOLUTION OF THE CITY OF SULTAN ACCEPTING THE HEARING EXAMINER'S RECOMMENDATION AND APPROVING THE JOSHUA FREED LLC PLANNED UNIT DEVELOPMENT AND THE PROPOSED SUBDIVISION APPLICATION FOR A 15-LOT PLANNED UNIT DEVELOPMENT (CALEB COURT)

WHEREAS Joshua Freed LLC (Applicant) filed an application for approval of Caleb Court, a 16-lot Planned Unit Development (PUD) subdivision for single-family development; and

WHEREAS an open record hearing was convened before the City's Hearing Examiner on October 9, 2007 on the application. Said hearing was continued to and concluded on November 1, 2007; and

WHEREAS, the City's Hearing Examiner issued a Recommendation dated November 13, 2007, for Denial of the PUD request without prejudice based on Findings and Conclusions affecting three elements of the applicant's plan; and

WHEREAS, the applicant, on November 26, 2007, appealed the Recommendation and requested a closed record hearing and appeal meeting;

WHEREAS the application came before the City Council for a closed record hearing and appeal meeting on January 24, 2008; and

WHEREAS on February 14, 2008, the City Council passed Resolution No. 08-05 accepting the Hearing Examiner's Recommendation and denying the PUD without prejudice, and returning the application to the applicant for modification to meet approval criteria. The Council rendered findings regarding modifications the applicant should consider that could allow approval of the request; and

WHEREAS the Hearing Examiner conducted a hearing on the revised plans on March 5, 2008. The Examiner's Report and Recommendation dated March 10, 2008 recommended that the proposal as revised be approved subject to conditions; and

WHEREAS no appeals have been filed;

NOW, THEREFORE:

A. The City Council accepts the Recommendation of the Hearing Examiner dated March 10, 2008, including the Findings of Fact and Conclusions of Law therein.

B. Specifically the City Council finds the proposal as revised by the applicant and reviewed by the Hearing Examiner satisfies the criteria set forth in Resolution 08-05 and should be approved.

C. The Caleb Court Planned Unit Development is hereby approved subject to the conditions set forth by the Hearing Examiner's Recommendation dated March 10, 2008, which Recommendation is incorporated herein as if set forth in full.

PASSED BY THE Sultan City Council and APPROVED by the Mayor this 10th day of April 2008.

CITY OF SULTAN

By Carolyn Eslick
Carolyn Eslick, Mayor

Attest:

By Laura Koenig
Laura Koenig, City Clerk

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BY:

BEFORE the HEARING EXAMINER of the
CITY of SULTAN

RECOMMENDATION

FILE NUMBER: FPPUD06-001

APPLICANT: Freed, LLC ¹

TYPE OF CASE: Preliminary Planned Unit Development subdivision (*Caleb Court*), including requests to reduce right-of-way and pavement width and to extend cul-de-sac length

STAFF RECOMMENDATION: Approve subject to conditions

SUMMARY OF RECOMMENDATION: DENY Planned Unit Development without prejudice; RETURN preliminary subdivision for modification

DATE OF RECOMMENDATION: November 13, 2007

INTRODUCTION

Freed, LLC (Freed), 14704 100th Avenue NE, Bothell, Washington 98011, seeks preliminary approval of *Caleb Court*, a 16 lot single family residential Planned Unit Development (PUD) subdivision of a 2.71 acre site zoned Moderate Density (MD).

Freed filed the application on October 27, 2006. ² (Exhibit 7 ³) The Sultan Department of Community Development (DCD) deemed the application complete on January 17, 2007. (Exhibit 3) On October 15, 2007, Freed filed a request for approval of an 850 foot long cul-de-sac, 550 feet longer than allowed by the adopted Design Standards. (Exhibit 24)

The subject property is located at 803 High Avenue, west of the present terminus of Salmon Run North.

The Sultan Hearing Examiner (Examiner) viewed the subject property on October 9, 2007.

¹ Correct, legal name of applicant confirmed by applicant during the open record hearing. (Testimony of Joshua Freed)

² This application was never subject to the PUD moratorium enacted by Ordinance No. 884-05: The moratorium ran from August 19, 2005, through February 18, 2006.

³ 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 C-1

RECOMMENDED CONDITIONS OF APPROVAL
FPPUD06-001
Caleb Court

The following conditions are offered in the event the Council determines that the proposal complies with all applicable criteria for approval.

This Preliminary Subdivision and Planned Unit Development are subject to compliance with all applicable provisions, requirements, and standards of the Sultan Municipal Code and standards adopted pursuant thereto. The permittee is responsible to obtain all necessary State and Federal permits and approvals required for completion of the project. In addition, development shall comply with the following special conditions:

Preliminary Plat and General PUD Design –

1. The general configuration, lot shapes and sizes, setbacks, site density, areas of open space, and typical house designs shall be as indicated on Exhibits 23.6 and 23.13 subject to these Conditions of Approval. Revisions to approved preliminary Planned Unit Developments are regulated by SMC 16.10.160(D) and (E); revisions to approved preliminary subdivisions are regulated by SMC 16.28.360. The Final PUD map shall be recorded as an amendment to the underlying zoning following Final PUD approval.
2. In accordance with SMC 16.28.340, the developer shall prepare a developer agreement subject to approval of the City. The agreement shall specify the requirements for construction of all infrastructure improvements, including plan submittals, inspections, bonding, private improvements, right-of-way improvements and facilities associated with the PUD, including improvements to all common areas. Site construction drawings shall be designed consistent with the conditions of approval. Site work shall not begin until City approval of the site development agreement.
3. The developer shall include screening fences consistent with SMC 16.12.120 at the rear property line of all lots prior to final inspection of the homes.
4. The developer shall establish a homeowners' association to assume responsibility for maintenance of common areas. The homeowners' association shall be recorded with the plat. The wording and conditions of the homeowners' association shall be subject to City approval prior to Final Plat.
5. The developer shall maintain the landscaping, open space improvements, drainage facilities, and other common areas within the site for a three-year period following installation. Such maintenance shall be secured with a performance bond filed with the City. Subsequent to the three-year period, maintenance responsibility shall be passed to the homeowners' association.

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HEARING EXAMINER RECOMMENDATION

RE: FPPUD06-001 (*Caleb Court*)

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Parking –

6. Areas of no parking that need to remain open for proper access shall be clearly marked and/or signed.

Open Space –

7. Proposed landscaping and improvements shall be constructed prior to occupancy of homes as generally indicated on the master site plan (Exhibit 2).
8. Play equipment and benches shall be installed in the Recreation Tract 999 and meet the requirements of Chapter 16.72 SMC.

Flood Plain –

9. The approximate flood zone elevation shall be drawn and labeled on the final plat drawing. All structures, improvements, and grading to be completed within the plat shall be designed and constructed in accordance with Chapter 17.08 SMC, Flood Damage Prevention. All structures in the 100-year flood plain shall be elevated and/or flood proofed. Elevation certificates are required. A note shall appear on the face of the plat and shall be recorded on the title of each lot within the floodplain that states: "Property may be within FEMA Flood Zone A and subject to flood hazards." unless the developer provides engineering documentation that demonstrates a lot is outside of the flood zone.

Water –

10. The developer/owner is responsible for any necessary improvements to the City's water system in order to provide adequate water to the site.

Sewer –

11. The developer/owner is responsible for any necessary improvements to the City's sewer system in order to provide sewer service to the site.

Surface Water Management –

12. During grading and construction activities, the developer shall retain and manage on-site surface and storm water within the site per the recommendations of the *Drainage Report* revised September 13, 2007 prepared by Site Development Associates, LLC. (Exhibit 23.9)
13. During site development, the developer shall inspect weekly, maintain, and repair all temporary and permanent erosion and sediment control BMPs to assure continued performance. During the wet weather construction period, the access road and on-site utilities shall be phased to minimize open soil exposure.
14. The temporary stormwater management facilities shall be constructed before any significant amount of site grading commences.

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Transportation –

15. Final street design, including paving, sidewalks, frontage improvements, parking, and emergency access must be approved by the City Engineer prior to construction. Replacement of the existing turnaround on Salmon Run North shall include extension of sidewalks, driveways and front lawns for affected lots as needed.
16. Street lighting shall be required on the on-site street. Prior to site development, the developer shall submit a detailed lighting plan that depicts continuous street illumination throughout the PUD to City staff for review and approval (SMC 16.10.120(B)(4)(a)). A master meter will be installed with monthly costs being borne by the Homeowners Association.
17. The developer shall post a five-year maintenance bond with the City to ensure effective implementation of pervious surface sections on the proposed street system, if pervious concrete roads are constructed. If an alternate asphalt and concrete street is constructed a two year maintenance bond will be required.

Other –

18. The developer shall demonstrate sufficient water flow from the proposed fire hydrants for review and approval by the City Engineer and Fire District prior to the issuance of occupancy permits.
19. Prior to construction, the developer shall prepare an erosion control plan subject to review and approval by the City Engineer.
20. During construction, the developer shall ensure that trucks are cleaned before leaving the site. The developer shall provide street cleaning of Salmon Run North during site clearing, grading and filling and shall promptly clean up any dirt, mud or other material deposited on public streets and shall be responsible for cleaning storm drains in public streets that are impacted by the construction.
21. All site improvements including streets, sidewalks, drainage improvements, open space landscaping and improvements, and other common area improvements shall be completed prior to Final Plat, with the exception of the final paving of streets. Alternatively, the City may approve a financial bond or assurance for items not completed prior to Final Plat. All site improvements, not including individual homes, must be installed prior to final inspection of the first home.
22. The existing house and structures proposed for demolition shall be moved, demolished, or otherwise modified so that they are in compliance with the Sultan Municipal Code prior to final plat approval.
23. The developer/developer shall pay traffic, recreation, and school impact fees and their administrative processing costs in accordance with Chapters 16.112 and 16.116 SMC.

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HEARING EXAMINER RECOMMENDATION

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Freed, LLC

November 13, 2007

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24. Prior to issuance of a certificate of occupancy and/or occupancy of any residence within the subdivision, a combination of developer agreements and public funds, including additional tax adoptions (such as an increased real estate excise tax and a B & O tax), other funding sources (such as potential developer loans to advance the receipt of payment of needed funds), and monies contributed by the proposed development for its impacts on the LOS, shall put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised; or, in the alternative, the police services LOS in existence at the time of final building permit inspections shall be met before approval for occupancy is granted.