

**SULTAN CITY COUNCIL  
AGENDA ITEM COVER SHEET**

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**ITEM NO:** H-1

**DATE:** May 27, 2010

**SUBJECT:** Conduct Public Hearing on Developer Agreement for Grandview Inc.

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



**ISSUE:**

Hold Public Hearing on proposed Development Agreement as required by Revised Code of Washington (RCW) 36.70B.200, between the City of Sultan and Grandview Inc. for dedication of 1,147.95 sq.ft of private property for future widening of Sultan Basin Road and delaying payment of Impact Fees for construction of a single-family residence to the time of issuance of the Certificate of Occupancy.

**STAFF RECOMMENDATION:**

Staff recommends that Council conduct a Public Hearing as required by RCW 36.70B.170 and RCW 36.70B.200 to consider adoption of Resolution 10-06, authorizing a Developer Agreement with Grandview Inc. establishing mutually beneficial development Conditions for Construction of a single-family residence at 13630 Sultan Basin Road.

**SUMMARY:**

Grandview Inc. is awaiting issuance of a Building Permit for construction of a single-family residence at 13630 Sultan Basin Road. Staff has reviewed final site design plans and the structural plan review has been completed at Snohomish County and returned to the City for issuance of the building permit. Due to the extreme prevalence of wetlands on the subject property, the five-acre parcel contains only one single-family residential building site in its south east corner fronting on Sultan Basin Road.

The City's improvement plans for Sultan Basin Road include widening in the area of the subject property. The City needs a three-foot strip of land on the full Sultan Basin Road frontage of the property for future improvement of the road. Grandview Inc. owns the subject five-acre parcel with 382.65 lineal feet of frontage on Sultan Basin Road. The dedication proposed in this Development Agreement would constitute 1,147.95 sq.ft. of property.

As development plans were under review, contacts between City Staff and the Developer resulted in a mutual proposal that the City would delay payment of Impact Fees until Certificate of Occupancy and that Grandview Inc. would dedicate the necessary three-foot strip for widening of Sultan Basin Road. (**Note:** The City is not permitted to require dedication of right-of-way when the application is for a single-family residential building permit. The dedication proposed in this Agreement was suggested by Grandview, Inc. with full understanding of the law and with full consent and no coercion by the City. As provided by statute, the City had originally proposed only that Grandview, Inc. indicate the location of the necessary three-feet for future widening on the site plan with provision for future negotiation and acquisition.)

**DISCUSSION:**

RCW provides that local governments can engage in Development Agreements with Developers to set specific standards for a project that are outside of the City's normal Development Standards. RCW 36.70.170 establishes the authority to enter into Development Agreements and the scope of topics that may be covered by such Agreements. RCW 36.70B.200 requires that Development Agreements be approved by the City only after a Public Hearing and adoption of an Ordinance or Resolution affirming the provisions of the proposed Agreement. Appeal procedures for such Agreements are provided by RCW 36.70C.

The City can accept dedications of property for road purposes without a Development Agreement. The reason for this Development Agreement is that Grandview Inc. has agreed to dedicate their private land to the City for road purposes in trade for delaying payment of the required Impact Fees. Impact Fees are, according to current Code, due at the time of issuance of the building permit. Delay of the Impact Fee payments until Certificate of Occupancy is not provided by current Code provisions, but is allowed as part of a Development Agreement in RCW 36.70B.170.

Staff proposes to the Council that dedication of the 1,147.95 sq.ft. of property to the City for road purposes is a meaningful and appropriate mutual benefit for allowing delay of Impact Fee payments until Certificate of Occupancy.

Staff has worked with the Developer and the City Attorney to prepare a Development Agreement for Council's consideration (**Attachment A**).

Council is now in a position to proceed with a Hearing on the Development Agreement. After the Hearing, Council will consider adoption of the Agreement through Resolution 10-06 in Agenda Item A-3 of this Agenda Packet.

**STAFF RECOMMENDATION:**

Staff recommends that Council conduct a Public Hearing as required by RCW 36.70B.170 and RCW 36.70B.200 to consider adoption of Resolution 10-06, authorizing a Developer Agreement with Grandview Inc. establishing mutually beneficial development conditions for construction of a single-family residence at 13630 Sultan Basin Road.

**ALTERNATIVES:**

Council may choose from the following alternatives:

1. Continue the Public Hearing to a future date;
2. Cancel the Public Hearing, thereby indicating that the Council is not interested in considering adoption of the proposed Development Agreement; or
3. Direct Staff to continue work on the Developer Agreement and give direction as to what additional issues need to be addressed.

**ATTACHMENTS:**

Attachment A: Resolution 10-06 including Proposed Development Agreement

**CITY OF SULTAN  
WASHINGTON**

**RESOLUTION NO. 10-06**

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**A RESOLUTION OF THE CITY OF SULTAN, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN A DEVELOPMENT AGREEMENT WITH GRANDVIEW INC. PROVIDING FOR DEDICATION OF PRIVATE PROPERTY FOR WIDENING OF SULTAN BASIN ROAD AND PROVIDING FOR DELAY OF IMPACT FEE PAYMENTS FOR A SINGLE-FAMILY RESIDENCE AT 13630 SULTAN BASIN ROAD UNTIL ISSUANCE OF THE CERTIFICATE OF OCCUPANCY.**

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WHEREAS, RCW 36.70B.170 provides for Development Agreements between local governments and property developers as a means to specify provisions and conditions of "The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications"; and

WHEREAS, 36.70B.200 provides that "A county or city shall only approve a development agreement by ordinance or resolution after a public hearing"; and

WHEREAS, Grandview Inc. has applied for construction of a single-family residence on 13630 Sultan Basin Road, a parcel of land containing 382.65 feet of frontage on Sultan Basin Road; and

WHEREAS, the Transportation Element of the City's Comprehensive Plan lists widening of this portion of Sultan Basin Road to a three-lane Minor Arterial as Transportation Project # T-42A; and

WHEREAS, Grandview Inc. has proposed to dedicate a strip of land three-feet wide along the entirety of its frontage adjacent to the westerly right-of-way line of Sultan Basin Road for future development of the road as called for in the Sultan Comprehensive Plan; and

WHEREAS, Grandview Inc. has proposed that the City of Sultan agree to delay payment of impact fees required for construction of a single-family residence to the time of issuance of the Certificate of Occupancy as a benefit in compensation for its dedication of private land for road purposes; and

WHEREAS, the City Council, upon advice of staff, and after a public hearing on this matter as required by RCW 36.70B.200, and upon due consideration of all public testimony offered at said public hearing, has determined the proposed property dedication and the proposed deferral of impact fee payments to be in the best interest and benefit of the City,

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

Section 1. The Mayor is authorized to sign the proposed Development Agreement with Grandview Inc, accepting a proposal for dedication of a three-foot strip of land across the entire easterly 382.65 feet of frontage of the property at 13630 Sultan Basin Road, and proposing delay of impact fees for construction of a single-family residence on said property until completion of said residence and issuance of a certificate of occupancy.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON  
THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2010.

CITY OF SULTAN

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

ATTEST/AUTHENTICATED:

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

Approved as to form:

\_\_\_\_\_  
Margaret J. King, City Attorney

Passed by the City Council:  
Resolution No.:  
Date Posted:

AFTER RECORDING RETURN TO:

Scott Wammack  
Grandview Inc.  
P.O. Box 159  
Arlington, WA 98223

**CITY OF SULTAN  
DEVELOPMENT AGREEMENT  
13630 SULTAN BASIN ROAD**

**GRANTOR: GRANDVIEW, INC.**  
**GRANTEE: CITY OF SULTAN, a municipal corporation**  
**Parcel Number: 28083200103500**

**A. PREAMBLE**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the City of Sultan, a Washington municipal corporation, hereinafter referred to as "City," and Grandview Inc. (c/o Scott Wammack), hereinafter referred to as the "Developer," collectively hereinafter "the Parties."

**B. RECITALS**

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, this Agreement by and between the City and the Developer relates to the construction of a single-family residence located at 13630 Sultan Basin Road, Sultan WA 98294 (hereinafter the "Property"); and

WHEREAS, this Agreement is intended to provide mutual benefit to the developer and the City relative to construction of a single-family residence and future development of Sultan Basin Road by the City; and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern, and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must be approved by ordinance or resolution after a public hearing (RCW 36.70B.200); and

WHEREAS, a public hearing for this Agreement was held on \_\_\_\_\_, 2010, and the City Council approved this Agreement on \_\_\_\_\_, 2010;

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties hereto agree as follows:

### **C. AGREEMENT**

**I. The Subject Property.** The subject property is that property legally and commonly described in the City of Sultan file as 13630 Sultan Basin Road.

**II. Parties to Development Agreement.** The parties to this Agreement are:

1. The "City" is the City of Sultan, 319 Main Street, Suite 200, Sultan, WA 98294.
2. The "Developer" is Grandview Inc., whose principal office is located at 129 N. Olympic Ave., Arlington, WA 98223-1335 (mail and notice to be sent to P.O. Box 159, Arlington, WA 98223-1335 c/o Mr. Scott Wammack).

**III. Effective Date and Term.** This Agreement shall commence upon the effective date of the City Council action approving this Agreement, and shall continue in force until Developer completes all residential construction with the Property, unless extended or terminated as provided herein. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject, however, to post-termination obligations of the Developer.

**IV. Compliance with Existing Laws.** The Developer agrees that construction of the proposed single-family residence is subject to compliance with all applicable provisions, requirements, and standards of the Sultan Municipal Code and standards adopted pursuant thereto. The Developer is responsible to obtain all necessary federal, state and local permits and approvals required for completion of the project. In addition, development shall comply with the following conditions of approval established by the City Council in Resolution No. 10-06 (Exhibit A hereto):

1. The Developer agrees to dedicate to the City of Sultan a strip of land consisting of the easterly three-feet of the property at 13630 Sultan Basin Road and adjacent to the westerly right-of-way line of Sultan Basin Road for the City's future widening

of Sultan Basin Road, said property is more particularly described as follows:

That portion of the Southeast quarter of the Northeast quarter of Section 32, Township 28 North, Range 8 East, W.M., in Snohomish County, Washington, lying West of the Westerly margin of Sultan Basin Road, described as follows:

Beginning at the intersection of the North line of said Southeast quarter of the Northeast quarter and Westerly margin of Sultan Basin Road, as it now exists;

Thence South  $0^{\circ} 41' 07''$  East along said Westerly margin of Sultan Basin Road, a distance of 382.65 feet;

Thence South  $87^{\circ} 58' 12''$  West 630.01 feet;

Thence North  $0^{\circ} 41' 07''$  West parallel with said Westerly margin of Sultan Basin Road, a distance of 383.36 feet, more or less, to said North line of the Southeast quarter of the Northeast quarter;

Thence North  $88^{\circ} 02' 03''$  East along said North line, a distance of 629.99 feet, more or less, to the point of beginning.

2. Prior to issuance of a certificate of occupancy for the single-family residence to be constructed at 13630 Sultan Basin Road, said dedication of land to the City shall be completed and recorded to the satisfaction of the City.
3. Developer shall not occupy or allow any occupancy of the residence, either before or after completion, until a Certificate of Occupancy is issued by the City.

V. **City Deferral of Impact Fees.** Upon performing all conditions of approval as set forth in this Agreement and upon compliance with the City's codes and regulations, the City agrees to the following:

1. The City will charge the appropriate building permit fee as provided by the City of Sultan Annual Fee Schedule at the time of issuance of a building permit for construction of a single-family residence on the Subject Property.
2. The City will defer payment of utility connection fees and related impact fees until issuance of a Certificate of Occupancy as provided by the Sultan Municipal Code and the International Building Code adopted by the City.

VI. **Intent and Termination of Agreement.** This Development Agreement is intended to memorialize the requirements of law and the specific development conditions and agreements for development of a single-family residence at 13630 Sultan Basin Road. This Agreement shall expire and be of no further force and effect upon:

1. Dedication of the three-foot by 382.65-foot, more or less, strip of private property to the City for road purposes; and
2. Payment of all utility connection fees, impact fees, special inspection fees, and any other outstanding fees attributable to the development of a single-family residence on the Subject Property prior to issuance of a Certificate of Occupancy; and

3. Issuance of a Certificate of Occupancy for a single-family residence at 13630 Sultan Basin Road.

**VII. Covenants and Assigns.** This Agreement shall run with the land and bind and inure to the benefit of the Parties hereto and their respective successors, heirs, legatees, representatives, receivers, trustees, successors, transferees and assigns.

1. This Agreement shall be binding upon the parties and their respective heirs, successors and assigns.

**VIII. Recordation of Agreement.** Developer shall record an executed copy of this Agreement with the Snohomish County Auditor, pursuant to RCW 36.70B.190, no later than fourteen (14) days after the Effective Date.

**IX. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

**X. Severability.** This Agreement does not violate any federal or state statute, rule, regulation or common law known; but any provision that is found to be invalid or in violation of any statute, rule, regulation or common law shall be considered null and void, with the remaining provisions remaining viable and in effect.

**XI. Equal Opportunity to Participate in Drafting.** The Parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any Party based upon a claim that that Party drafted the ambiguous language.

**XII. Full Understanding.** The Parties each acknowledge, represent and agree that they have read this Agreement; that they fully understand the terms thereof; that they have had the opportunity to be fully advised by their legal counsel, accountants and other advisors with respect thereto; and that they are executing this Agreement after sufficient review and understanding of its contents.

**XIII. Amendment to Agreement and Effect of Agreement on Future Actions.** This Agreement may be amended by mutual consent of all of the Parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (see, RCW 36.70B.200). However, subject to Developer's vested rights, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or Development Regulations affecting the Subject Property.

**XIV. Notices.** Notices, demands, or correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section C.II, above. Notice to the City shall be to the attention of both the Mayor and the City Attorney.

**XV. Authority Reserved.** Nothing in this Agreement shall be construed to diminish, restrict, or limit the police powers of the City granted by the Washington State Constitution or by general law. Pursuant to RCW 36.70B.170(4), the City of Sultan reserves authority to impose new or different regulations upon the plat or any other permit or approval issued for the Development, together or separately, to the extent required by a serious threat to public health and safety.

**XVI. Counterpart Originals.** This Agreement may be executed in multiple counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by a party shall have the same force and effect as if that party had signed all other counterparts.

**XVII. No Third-Party Beneficiaries.** This Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity. No other person or entity not a party to this Agreement may enforce the terms and provisions of this Agreement.

**XVIII. Integration.** This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof. There are no other agreements between the Parties, oral or written, except as expressly set forth herein.

**XIX. Specific Performance.** The Parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the Parties are entitled to compel specific performance of all material terms of this Agreement by any Party in default hereof.

**XX. Attorneys' Fees.** In any action between the Parties to this Agreement to enforce any of its terms, the prevailing party shall be entitled to recover expenses, including reasonable attorneys' fees and costs incurred in preparation for and prosecuting the action.

The undersigned covenant and represent that they are fully authorized to enter into and execute this Agreement.

**CITY OF SULTAN**

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

Attest:

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



**EXHIBIT "A"**

**RESOLUTION No. 10-06**

**CITY OF SULTAN**

WASHINGTON

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CITY OF SULTAN

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Carolyn Eslick, Mayor

ATTEST/AUTHENTICATED:

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

Approved as to form:

\_\_\_\_\_  
Margaret J. King, City Attorney

Passed by the City Council:  
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