

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: A-3 B

DATE: July 8, 2010

SUBJECT: Repeal of SMC 21.04.052
Additional criteria for single family detached dwelling (clustered).

CONTACT PERSON: Robert Martin, Community Development Director

ISSUE: Conduct first reading of Ordinance 1082-10, an Ordinance repealing Sultan Municipal Code (SMC) provision 21.04.052 "Additional Criteria for single family detached dwelling (clustered), in its entirety.

PLANNING BOARD RECOMMENDATION:

The Planning Board recommends that the Council adopt an ordinance repealing (SMC) provision 21.04.052 that provides standards for cluster subdivisions, and that the Council proceed with adoption without conducting an additional public hearing as provided by SMC 16.134.050 J.

STAFF RECOMMENDATION:

Staff recommends that the Council accept the Planning Board's recommendation and conduct first reading of Ordinance 1082-10 (**Attachment A**).

BACKGROUND:

At its May 18, 2010 meeting the Board reviewed a staff report outlining the issues leading to the recommendation that SMC 21.04.052 be repealed.

At its June 15, 2010 meeting, the Board conducted a public hearing on the proposed amendment as provided by SMC 16.134.050 I.

At its June 15, 2010 meeting, the Board voted unanimously to recommend repeal of SMC 21.04.052 in its entirety, and that the City Council need not conduct an additional public hearing prior to adoption of the ordinance.

DISCUSSION:

Following is the information that the Planning Board reviewed in its consideration of this proposal. There was no public testimony at the public hearing.

Analysis of SMC 21.04.052:

This code provision was intended to function as a lot clustering system for preservation of wetlands, stream corridors, and other critical areas, as well as a way to achieve densities that were called for in the Comprehensive Plan. It was adopted in 2002 as part of the Conditional Use Permit provisions of the Unified Development Code.

There are several problems with this situation. These are presented briefly as follows:

1. A valid cluster subdivision system requires a detailed set of standards to ensure that developers have clear direction and the reviewing agency has enforceable standards for review and approval of the project. The detail included in the Lot Averaging code now scheduled for adoption by the City Council is indicative of the standards required to make this process work. The five one-sentence provisions of 21.04.052 do not give the level of specificity and direction required of a Cluster Subdivision Ordinance.

2. The provision for Lot Clustering Subdivisions is in the Conditional Use section of the SMC, not integrated into the subdivision processes of SMC 16.28. As a stand-alone conditional use, there is no coherent link between the subdivision design and review standards and a conditional use application for clustering. A development proposing clustering need only meet the general criteria for conditional uses which are not appropriate in any way for the review of subdivision design proposals. The general criteria for a conditional use in SMC 21.04.050 are for review of specific projects such as church and associated parking lot, not for the complexities of a subdivision design. Due to this lack of connection, there is no clear guidance as to how the Conditional Use application is to be processed in relationship to the subdivision application. On two relatively recent subdivision applications, the Hearing Examiner made findings affirming compliance with the general criteria for Conditional Uses and approved the clustering concept for the development. Given the conditional use standards presented to him, the hearing examiner could do little more than a minimal review of the proposal's clustering concept and move on to the standards in Chapter 16.28 for subdivision review. The Conditional Use review did not result in any meaningful contribution to review of the subdivision application.
3. A main objective of the clustering provision was to preserve wetlands and other critical areas. This was a valid step in 2002, as the City had not yet adopted comprehensive Critical Areas Regulations. Standards of the Sultan Critical Areas Regulations (SMC 16.80), adopted in 2006, far exceed the standards called for in the clustering provisions of 21.04.052. The Critical Areas Regulations of SMC 16.80 contains the level of detail and enforcement that is appropriate for review of subdivision proposals. All subdivisions, whether clustered or not, must comply with the Critical Areas Regulations. Compliance with the Critical Areas Regulations is the basis of the Lot Averaging code that is ready for final adoption by the City Council.
4. The provisions of 21.04.052 work together to provide a clustering provision that is based on reduction of lot size, while maintaining the density prescribed in the applicable zone. This is accomplished by the Lot Averaging code and the Clustering provisions are an unnecessary redundancy in the Conditional Use section.
5. The Lot Averaging program that has been adopted by the City Council is a comprehensive, implementable, and enforceable mechanism to account for large critical areas exclusions on development parcels in the city. Retention of 21.04.052 would present a confusing and potentially conflicting situation that could foul review of future subdivision proposals.
6. Since the Lot Averaging code is now adopted, this proposed action can legitimately be categorized as a house-keeping function to accommodate ongoing upgrading of the code that is required for consistency within the Unified Development Code.

STAFF RECOMMENDATION:

Staff recommends that the Board conduct a public hearing to take public testimony on repeal of SMC 21.04.052 "Additional Criteria for Single-family detached dwelling (clustered)".

ATTACHMENTS:

Attachment A: Ordinance 1082-10

Attachment B: SMC excerpt, Section 21.04.052

CITY OF SULTAN
WASHINGTON
ORDINANCE NO. 1082 -10

AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON, AMENDING SULTAN MUNICIPAL CODE (SMC) TITLE 21, OTHER LAND USES, BY REPEALING SECTION 21.04.052, ADDITIONAL CRITERIA FOR SINGLE FAMILY DETACHED DWELLING (CLUSTERED), IN ITS ENTIRETY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City of Sultan has adopted Sultan Municipal Code Title 21, Other Land Uses, and periodically adopts amendments to said Title in response to changing conditions; and

WHEREAS, Title 21 contains provisions that prescribe procedures and standards for issuance of conditional uses as contained in SMC Title 16; and

WHEREAS, Section 21.04.052 prescribes standards for review and approval or denial of an application for a clustered residential subdivision as a conditional use; and

WHEREAS, the City Council, through adoption of Ordinance 1079-10 adopted a lot averaging process in SMC Title 16 that supersedes and makes obsolete the provisions of Section 21.04.052, and

WHEREAS, the Planning Board, at its regular meeting of June 15, 2010, conducted a duly advertised public hearing on the proposal to repeal Section 21.04.052 in its entirety; and

WHEREAS, the Planning Board received no testimony in opposition to the proposal; and

WHEREAS, the Planning Board, at its regular meeting of June 15, 2010, unanimously adopted a motion to forward the proposal to repeal, and recommended, as provided in SMC 16.134.050 J, that the City Council need not hold an additional public hearing on the proposed amendment; and

WHEREAS, the City provided notice to the Washington Department of Community, Trade, and Economic Development for review under provisions of RCW 36.70A.106 (3)(b), and other notices as required by law; and

WHEREAS, the City Council has received and accepted the recommendation of the Planning Board, and finds that the proposed repeal of Section 21.04.052 is an appropriate housekeeping measure to keep the SMC current and that said action will help to avoid duplication and confusion in administration of land use applications;

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

Section 1. The City of Sultan Municipal Code Title 21, Other Land Uses, is hereby
amended by repealing section 21.04.052 in its entirety.

Section 2. 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 3. 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 _____, 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:

Date of Publication:

Effective Date:

Sultan Municipal Code Excerpt
Section 21.04.052

21.04.052 Additional criteria for single-family detached dwelling (clustered).

The following additional criteria apply to allow single-family detached dwelling(s) (clustered):

A. The density on the property may not be greater than but should match the density for single-family detached dwellings;

B. Where urban density goals are to be achieved, but critical areas can be adequately protected, dimensional requirements for lot size, lot width, front and rear yard setbacks may be decreased by no more than 20 percent;

C. As a result of the design of the subdivision, a minimum of 20 percent of the net land area of continuous, publicly accessible open space such as stream or wetland and associated buffers, a ravine, bluff or other unique topographic feature, or conservation area is preserved;

D. As a result of the dwellings and any subdivision, the availability of housing to all economic segments of the population is increased, and housing density variety is preserved throughout the community. (Ord. 1052-09 § 1; Ord. 983-08 § 2; Ord. 780-02 § 16)