

SULTAN PLANNING BOARD AGENDA ITEM COVER SHEET

ITEM NO: Public Hearing – Amending SMC 21.04

DATE: May 6, 2008

SUBJECT: Hold a public hearing to consider a proposed amendment to the Sultan Municipal Code 21.04.03 to remove the \$850 filing fee for the Conditional Use Permit and change the hearing body for a Conditional Use Permit.

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the Planning Board is to hold a public hearing to:

1. Amend the Sultan Municipal Code 21.04.030 by removing the \$850.00 required filing fee for Conditional Use Permits and adding language to require the fee based on the adopted fee schedule.
2. Update the Sultan Municipal Code, consistent with SMC 2.26 and 16.120, to update the reference giving authority to the Hearing Examiner to review Conditional Use Permits instead of the Planning Commission.

STAFF RECOMMENDATION:

Hold a public hearing on Tuesday, May 6, 2008 at 6:30pm to take public comment on the Planning Board's recommendation to amend Sultan Municipal Code 21.04 (Attachment A) to:

1. Remove the \$850.00 fee set in the code and provide for the fee to be set by resolution through the annual fee schedule adopted by the City Council.
2. Change references in SMC 21.04 from "Planning Commission" to "Hearing Examiner" to be consistent with SMC 2.26 and SMC 16.120.

BACKGROUND:

For comprehensive plan and development regulation amendments, the statutes (RCW 35A.63.073 and 35A.63.070) require the Planning Board hold at least one public hearing. Notice is to be given as provided by ordinance and published at least ten days

prior to the hearing. If continued hearings are held, no additional notices need be published.

The Planning Board discussed this issue briefly at its February 19, 2008 meeting. On April 1, 2008 the Planning Board set the public hearing for April 15, 2008. City staff missed the 10-day notice period for the April 15, 2008 meeting. The notice was sent out on April 22, 2008 and published in the Everett Herald on April 25, 2008 (Attachment B) to hold a public hearing on May 6, 2008.

The Washington State Department of Community Trade and Economic Development (CTED) is reviewing the proposed change to the development regulation as required by State law (Attachment C).

SUMMARY:

The City is looking to amend a filing fee for a conditional use permit as set forth in Chapter 21.040.030.

The filing fee was set ten years ago with the adopting ordinance (690-98) and does not cover the costs incurred by the City for staff time to process the permit application. City staff recommend deleting the reference to the filing fee in SMC 21.04 and instead set the filing fee by resolution through the annual fee schedule adopted by the City Council.

In addition, Chapter 21.04 makes references to the planning commission reviewing applications for conditional use permits. This task is now assigned to the hearing examiner as outlined in SMC 2.26 and SMC 16.120. This is a housekeeping item to provide for a consistent code.

DISCUSSION:

The \$850.00 filing fee has not been significantly adjusted in 10 years. The inflation rate from December 1997 to December 2007 is 30.21%.¹ Adjusted for inflation, the fee would be \$1,106.78

The City's previous policy in constructing a fee schedule for development applications is to, in general, try to recover 100% of direct costs of processing development applications.

The staff work that is accounted for in structuring the fee schedule includes the work of all City departments involved in review of development applications, from the time an application is originally submitted through the time the improvement is constructed and a Certificate of Occupancy is issued.

Moving the filing fee to the annual fee resolution will allow the fee to be adjusted as necessary to ensure the City is recovering costs consistent with Council policy.

¹http://inflationdata.com/Inflation/Inflation_Calculators/Inflation_Rate_Calculator

FISCAL IMPACT:

The fiscal impact is to ensure the cost of providing service to the applicant meets the City's policy goal recovering 100% of direct costs of processing development applications.

For comparison, the table below shows the fees charged by area cities for a conditional use permit. The Association of Washington Cities conducts a fee survey every other year. AWC conducted the last fee survey in 2006.

City	Conditional Use Permit 2006 AWC Fee Survey
Carnation	\$1000
Darrington	\$850
Gold Bar	\$225
Kirkland	\$8,160 + \$300 (unit)
Marysville	\$1,000 + \$1,500 (if public hearing required)
Mill Creek	\$1,500
Monroe	\$1,000
Sultan (current)	\$850
Sultan (proposed)	\$500 + direct expense

RECOMMENDATION:

Hold a public hearing to:

1. Amend the Sultan Municipal Code 21.04.030 by removing the \$850.00 required filing fee for Conditional Use Permits and adding language to require the fee based on the adopted fee schedule.
2. Update the Sultan Municipal Code, consistent with SMC 2.26 and 16.120, to give authority to the Hearing Examiner to review Conditional Use Permits instead of the Planning Commission.

ATTACHMENTS

A – Proposed Amendments to SMC 21.04

B - Notice of public hearing
C – Response letter from CTED

Chapter 21.04 CONDITIONAL USE PERMITS

Sections:

[21.04.010](#) Purpose.

[21.04.020](#) Uses requiring a conditional use permit.

[21.04.030](#) Application – Requirements and fees.

[21.04.050](#) Criteria.

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

[21.04.054](#) Additional criteria for duplexes or two-family dwellings.

[21.04.060](#) Expiration and renewal.

[21.04.070](#) Revocation of permit.

[21.04.080](#) Performance bond and other security.

[21.04.090](#) Resubmittal of application.

21.04.010 Purpose.

It is the purpose of this chapter to establish review and permit approval procedures for unusual or unique types of land uses, which, due to their nature, require special consideration of their impact on the neighborhood, and land uses in the vicinity. The uses in this chapter may be located in any district by special permission of the [planning commission hearing examiner](#) under such conditions as the commission may recommend and the city council shall approve. (Ord. 690-98)

21.04.020 Uses requiring a conditional use permit.

The following are the uses which require a conditional use permit:

A. The conditional uses listed in the specified use districts require a conditional use permit in order to locate and operate in an appropriate zone district within the city.

B. Existing nonconforming uses which wish to expand. (Ord. 690-98)

21.04.030 Application – Requirements and fees.

Application for conditional use permits shall be filed with the planning department on forms prescribed by that office. A filing fee, [set by resolution through the annual fee schedule adopted by the City Council, of \\$850.00](#) shall accompany all applications. The [planning commission hearing examiner](#) will review applications for conditional use permits and the recommendations will be passed to the city council for final action. The [planning commission hearing examiner](#) may recommend to the city council denial, approval, or approval with conditions. Conditional use applicants must adhere to all applicable public notification requirements. Denial of conditional use permit applications is not appealable. All conditional use permits are subject to design review procedures. (Ord. 690-98)

21.04.050 Criteria.

The following criteria shall apply in granting a conditional use permit:

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 the possible adverse impacts, which the proposed use may have on the area in which it is located. (Ord. 690-98)

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. 780-02 § 16)

21.04.054 Additional criteria for duplexes or two-family dwellings.

The following additional criteria apply to allow duplexes or two-family dwellings:

A. Only one other duplex or multifamily use may exist within 300 feet of the proposed use and there must be at least a 100-foot separation (building to building) between the uses.

B. The proposed dwelling has been designed to be harmonious with the neighborhood and is constructed to provide the appearance of a single-family unit by, for example, altering the location of the front doors and windows; garages and access to garages; parking; landscaping and fencing; utilities and mailbox locations; building heights consistent with

surrounding properties; exterior colors and materials; and differing setbacks, all of which are confirmed by a site plan. (Ord. 780-02 § 17)

21.04.060 Expiration and renewal.

A conditional use permit shall automatically expire one year after a notice of decision approving the permit is issued unless a building permit conforming to plans for which the CUP was granted is obtained within that period of time. A conditional use permit shall automatically expire unless substantial construction of the proposed development is completed within two years from the date a notice of decision approving the permit is issued. The ~~planning commission~~ hearing examiner or city council, on appeal, may authorize longer periods for a conditional use permit if appropriate for the project. The ~~planning commission~~ hearing examiner or city council, on appeal, may grant a single renewal of the conditional use permit if the party seeking the renewal can demonstrate extraordinary circumstances or conditions not known or foreseeable at the time the original application for a conditional use permit was granted, which would not warrant such a renewal. No public hearing is required for a renewal of a conditional use permit. (Ord. 690-98)

21.04.070 Revocation of permit.

A. The ~~planning commission~~ hearing examiner may revoke or modify a conditional use permit. Such revocation or modification shall be made on any one or more of the following grounds:

1. That the approval was obtained by deception, fraud, or other intentional and misleading representations;
2. That the use for which such approval was granted has been abandoned;
3. That the use for which such approval was granted has at any time ceased for a period of one year or more;
4. That the permit granted is being exercised contrary to be the terms or conditions of such approval or in violation of any statute, resolution, code, law or regulation; or
5. That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety.

B. Any aggrieved party may petition the ~~planning commission~~ hearing examiner in writing to initiate revocation or modification proceedings.

C. Before a conditional use permit may be revoked or modified, a public hearing shall be held. Procedures concerning notice, reporting and appeals shall be the same as required by this chapter for the initial consideration of a conditional use permit application. (Ord. 690-98)

21.04.080 Performance bond and other security.

A performance bond or other adequate and appropriate security may be required for any elements of the proposed project which the ~~planning commission~~ hearing examiner or city council, on appeal, determines are crucial to the protection of the public welfare. Such bond shall be in an

amount equal to 125 percent of the cost of the installation or construction of the applicable improvements. (Ord. 690-98)

21.04.090 Resubmittal of application.

An application for a conditional use permit, which has been denied, may not be resubmitted within six months from the date of planning commission hearing examiner or council disapproval, whichever is later. (Ord. 690-98).