

# **SULTAN PLANNING BOARD AGENDA ITEM COVER SHEET**

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**ITEM NO:** P-3

**DATE:** December 16, 2008

**SUBJECT:** Sultan Municipal Code (SMC) Amendments  
City Council Removed from Quasi-judicial procedures  
Hearing Examiner vested with Quasi-judicial procedures  
Amend SMC Chapters 2, 16, and 21

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

**ISSUE:**

Staff presentation and Board discussion regarding draft amendments to Sultan Municipal Code. These amendments remove Quasi-judicial land use hearings and decisions from City Council and place all such actions in the Hearing Examiner section of the Code.

**STAFF RECOMMENDATION:**

1. Review the draft code language (Attachment A).
2. Direct staff to proceed with amendment process starting at the Planning Board.

**BACKGROUND:**

The Council has expressed interest in vesting all of the Quasi-judicial procedures in the Hearing Examiner. Quasi-judicial processes are land use actions that affect a specific property based on an application for a particular decision eg. conditional use, variance, zone map change.

This activity was briefly introduced at the Planning Board/City Council joint meeting of November 18, 2008. The Council indicated that this concept was moving in the desired direction and that they wanted the Board to pursue it and present a recommendation to Council in the near future.

**DISCUSSION:**

Quasi-judicial process is the part of the planning program wherein decisions are made about specific applications for uses or permits to place a land use or a new zone on a particular piece of property. As this is a very detailed and legally contentious process, most jurisdictions, including Sultan, have transferred the responsibility of quasi-judicial

decision making to a professional typically called a Hearing Examiner. Title 2.26 of the Sultan Municipal Code (SMC) establishes the office of Hearing Examiner for the City.

When Title 2.26 was adopted, Section 2.26.010 B. and 2.26.090 transferred action on variances, conditional uses, short plats, subdivisions, and administrative appeals to the Hearing Examiner (See Attachment B). In several of these actions, however, the Examiner was charged with making a recommendation to the Council instead of making a final decision. Appeals of Examiner decisions were also filed with the Council. In this system, the Council was still exposed to all of the legal complexity and potential liability of quasi-judicial land use decision making.

Recognizing that this system has resulted in considerable confusion and duplication of effort, the Council has directed staff and the Board to construct a comprehensive review of the SMC and recommend amendments that remove the Council from the quasi-judicial process in every way that is legally allowed and appropriate. Note that the Planning Board does not engage in any quasi-judicial processes based on their authorities provided in SMC 2.17.160.

The code amendments necessary to accomplish this charge are located in: SMC Chapter 2.26, Hearing Examiner; Title 16, Unified Development Code; and Title 21, Other Land Uses.

It is a very difficult exercise to locate each and every clause in this large body of code that addresses or implies City Council involvement in a land use decision. Staff has provided a preliminary draft of the known changes in Attachment A. We are still working with the City Attorney to locate all references to Council involvement and to edit the language. With this discussion item and transmission of the attached draft, we seek Planning Board involvement in this effort.

Note that this is a specific and focused project. It is only intended to remove the Council from quasi-judicial processes. There is extensive work required to revise the code to bring it up to current standards. That full-scale work will follow this single-topic project.

**RECOMMENDATION:**

Review and discuss the attached draft (Appendix A). Provide any direction that is appropriate at this point in the process.

It is not expected that the Board will be ready to make final recommendations at this meeting. As stated above, we are still editing language with involvement of the City Attorney. This discussion item is considered to be the first work session on this project. We will have a revised draft for Board review at the next meeting.

Prior to the next meeting, it will be very helpful for Board Members to closely read the draft (Appendix A) to accomplish three objectives:

- Become conversant with the concepts and processes involved in these codes as part of ongoing Board education
- Locate and advise staff of any “hidden” references to City Council involvement in quasi-judicial procedures. This could take the form of a reference to “appeals to council” “recommendations to the council” from the Board or the Hearing Examiner, “Council decision”, etc.
- Locate and advise staff on any “hidden” references to the Planning Commission, the Planning Board, the Board of Adjustment or other board being involved in the same ways as described for the Council in the bullet point above.

**ATTACHMENTS:**

Attachment A: Legislative mark-up staff draft of amendments to Sultan Municipal Code Title 2, 16, 21.