



PLANNING BOARD AGENDA

PLANNING DEPARTMENT

February 1, 2022 - 7:00 PM

REMOTE MEETING

319 Main Street, Sultan WA 98294

- I. **Call to Order, Pledge of Allegiance**
- II. **Roll Call**
- III. **Approval/Changes to the Agenda**
- IV. **Public Comments/Visitors**

Anyone who wishes to speak on any matter not appearing on the agenda may do so at this time. Citizens are requested to keep Public Comments to a 3-minute maximum (3 minutes or less per person) to allow time for everyone to speak.
- V. **Planning Board Member Comments**
- VI. **Staff Comments**
 - a. Project and Permit Updates
- VII. **Approval of Minutes**

January 18, 2022, Meeting Minutes
- VIII. **Presentation**
 - a. Storefront Studio
 - b. Housing Action Plan
- IX. **Discussion Item**
 - a. Appeal and Hearing Examiner Changes
- X. **Summary of Meeting Results and Actions for Next Meeting**
- XI. **Public Comments on Agenda Items Only**
- XII. **Planning Board Member Comments**
- XIII. **Adjournment**

Join Us by Zoom Meeting

Andy Galuska is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

<https://us02web.zoom.us/j/85332254041?pwd=TUx2N2hhU2I1ZDVWeWdTWU1ydnVKdz09>

Meeting ID: 853 3225 4041

Passcode: 566510

One tap mobile

+12532158782,,85332254041# US (Tacoma)

+16699006833,,85332254041# US (San Jose)

Dial by your location

+1 253 215 8782 US (Tacoma)

+1 669 900 6833 US (San Jose)

+1 346 248 7799 US (Houston)

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Meeting ID: 853 3225 4041

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PLANNING BOARD MISSION STATEMENT

The City of Sultan Planning Board's mission is to translate its knowledge of the community into recommendations on land use plans and codes that help the community to achieve its goals and desires for health, prosperity, and quality of life for present and future generations.

Planning Board Members

Janet Peterson, Chair
Mike Weidman, Pro-Tem
Judie Cyr
Andrew Rockwell
Vacant Position

Community Development Staff

Andy Galuska, Planning Director
Cyd Donk, Secretary of the Board/Assistant Planner

ADA NOTICE: City of Sultan Community Center is ADA accessible. Accommodations for person with disabilities will be provided upon request. Please make arrangements prior to the meeting by calling City Hall at 360.793.2231. For additional information please contact the city at cityhall@ci.sultan.wa.us or visit our website at www.ci.sultan.wa.us

(360) 793-1311, FAX (360) 793-3344
Staff Email: planning.department@ci.sultan.wa.us



**SULTAN PLANNING BOARD MINUTES
REMOTE MEETING
January 18, 2022**

PLANNING BOARD MEMBERS PRESENT:

Janet Peterson
Michael Weidman
Andrew Rockwell
Judie Cyr
Vacant

STAFF PRESENT:

Andy Galuska, Planning Director
Cyd Donk, Assistant Planner

CALL TO ORDER:

Call to Order at 7:13 p.m.

CHANGES TO THE AGENDA:

None.

PUBLIC COMMENTS ON MATTERS NOT ON THE AGENDA:

None

PLANNING BOARD MEMBER COMMENTS:

None.

STAFF COMMENTS:

Staff gave update on projects that are keeping us very busy. Cobble Hill has started building houses. Wyndham Highlands 3 is ready; Wyndham Highlands 2 is really close to final plat. The snow slowed everything down. WH 1 has drainage issues, and they are working through it. The WWTP is being upgraded and we are working through the process. Working a lot on the US 2 corridor. Working with TSI as a consultant and we'll be presenting at Council meeting on January 28th. Council workshop to discuss traffic impact fees and the US 2 corridor on February 3rd.

All information for land use projects, hearings and Decisions are available on-line here:
<https://www.ci.sultan.wa.us/167/Land-Use-Planning-Projects>

APPROVAL OF MINUTES: Rockwell made a motion to approve the November 16, 2021, as submitted. Seconded by Cyr. All Ayes.

PRESENTATION:

Code plan emergency for appeals and the hearing examiner.

Appeals are:

- Process to appeal decisions if people disagree with the outcome
- Typically, there is a local appeal process (what we are discussing) as well as an appeal allowed under the Land Use Petition Act (LUPA).

Goals of this code project:

- Remove the Board of Adjustments
- All appeals through the hearing examiner
- Clarify appeal procedures

Project considerations:

- Fair consideration for appellants
- Benefits of Hearing Examiner over a board
- Clearly indicate the process for appeals

Hearing Examiner Usage:

- Fair consideration for appellants
- Benefits of Hearing Examiner over a board
- Clearly indicate the process for appeals

Director Galuska reviewed the appeal, board of adjustments and hearing examiner as adopted in city code. He also explained the City received an appeal and the hearing examiner stated that he did not feel that this appeal should have been heard by him. He thought it should be the board of appeals. The code is very unclear, and we are not sure what the intent of the board of adjustments because the staff that created it is no longer here and there were no notes as to why they were created.

Cyr asked where the code is located. Galuska explained that that is another problem because it is spread out throughout the code.

Rockwell asked for a brief explanation on how the appeal came about. Galuska stated there is a commercial project with a neighboring property that have a disagreement.

Rockwell and Cyr agree that this sounds like it really should be cleared up.

Rockwell asked about SEPA determinations and how they are processed. Brief discussion.

DISCUSSION AND STUDY ITEMS:

Bring back the appeal/HE with code
Projects kicking off with UW, meeting Andy meeting with professor tomorrow
Consultant for housing action plan will be decided
Interviews with 2-people for the open position

SUMMARY OF MEETING RESULTS AND ACTIONS FOR NEXT MEETING:

Next meeting February 1, 2022.

PUBLIC COMMENTS ON AGENDA ITEMS ONLY:

None.

PLANNING BOARD MEMBER COMMENTS:

None.

STAFF COMMENTS:

None.

ADJOURNMENT:

Peterson made a motion to adjourn and close the meeting, Rockwell seconded the motion. All Ayes.

ADJOURNED 7:50 P.M.

Chapter 2.26 HEARING EXAMINER

Sections:

- 2.26.010 Purpose.**
- 2.26.020 Creation of hearing examiner position.**
- 2.26.030 Appointment.**
- 2.26.040 Qualifications.**
- 2.26.050 Removal.**
- 2.26.060 Freedom from improper influence.**
- 2.26.070 Conflict of interest.**
- 2.26.080 Rules.**
- 2.26.090 Duties of the examiner – Applications.**
- 2.26.100 Reports of city departments.**
- 2.26.110 Public hearing.**
- 2.26.120 Examiner’s decision.**
- 2.26.125 Reconsideration of examiner’s decision.**
- 2.26.130 Notice of examiner’s decision.**
- 2.26.140 Appeal from examiner’s decision.**
- 2.26.150 *Repealed.***
- 2.26.160 *Repealed.***
- 2.26.180 Local improvement district assessment roll hearings.**
- 2.26.190 Variance criteria.**

2.26.010 Purpose.

The purpose of this chapter is to establish a system of land use regulatory hearings which will satisfy the following basic needs:

- A. A more prompt opportunity for a hearing and decision on alleged violations of land use regulations, and such other regulations as may be assigned to the hearing examiner;
- B. To provide an efficient and effective system for deciding quasi-judicial actions including conditional use applications, variance applications, preliminary subdivision applications, appeals from administrative decisions, and various other procedures as specified in this code (RCW [58.17.330](#)); and
- C. To help ensure procedural due process and appearance of fairness by holding such hearings before a neutral party, competent in the fields of land use and procedural requirements. (Ord. 1050-09 § 1; Ord. 979-08 (9/11/08); Ord. 550, 1990)

2.26.020 Creation of hearing examiner position.

Pursuant to Chapter [35A.63](#) RCW, the office of hearing examiner, hereinafter referred to as examiner, is created. Except for appeals of administrative decisions, all land use development regulation and

construction code matters of a quasi-judicial nature not requiring a modification of any ordinance or legislation shall be referred to the examiner who shall interpret, review and implement land use regulations in accordance with the procedures set forth herein. (Ord. 1236-16 § 1; Ord. 1050-09 § 1; Ord. 979-08 (9/11/08); Ord. 701, 1999; Ord. 550, 1990)

2.26.030 Appointment.

~~The hearing examiner(s) shall be appointed by the mayor and confirmed by a majority vote of the city council from a list of qualified persons approved by the council. The council shall approve the compensation of the hearing examiner as with other professional and consultant positions. Compensation for the services to be rendered by the hearing examiner(s) shall be negotiated through contract. A hearing examiner shall serve until the end of the term as identified in the contract, or until the appointment is revoked by majority of the city council. The mayor may also appoint, and approve contracts for, deputy hearing examiner(s) of hearing examiner(s) pro tem in the event of the hearing examiner(s) absence or inability to act.~~ (Ord. 1050-09 § 1; Ord. 979-08 (9/11/08); Ord. 701, 1999; Ord. 550, 1990)

2.26.040 Qualifications.

Examiners shall be appointed solely with regard to their qualifications for the duties of their office and will have such training and experience as will qualify them to conduct administrative or quasi-judicial hearings on regulatory enactments and to discharge the other functions conferred upon them. Examiners shall hold no other elective or appointive office or position in the city of Sultan. (Ord. 1050-09 § 1; Ord. 979-08 (9/11/08); Ord. 550, 1990)

2.26.050 Removal.

The mayor ~~may remove an examiner from office with~~ concurrent majority vote of the city council may ~~remove an examiner from office for cause.~~ (Ord. 1050-09 § 1; Ord. 979-08 (9/11/08); Ord. 550, 1990)

2.26.060 Freedom from improper influence.

No person, including city officials, elected or appointed, shall attempt to influence an examiner in any matter pending before him, except at a public hearing duly called for such purpose, or to interfere with an examiner in the performance of his duties in any other way; provided, that this section shall not prohibit the city's attorney from rendering legal service to the examiner upon request. (Ord. 1050-09 § 1; Ord. 979-08 (9/11/08); Ord. 550, 1990)

2.26.070 Conflict of interest.

No examiner shall conduct or participate in any hearing, decision, or recommendation in which the examiner has a direct or indirect substantial financial or familial interest or concerning which the examiner has had substantial prehearing contacts with proponents or opponents. Nor, in considering an examiner's recommendation, shall any member of the council who has such an interest or has had such contacts participate in consideration thereof. (Ord. 1050-09 § 1; Ord. 979-08 § 1 (9/11/08); Ord. 550, 1990)

2.26.080 Rules.

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The examiner shall have the power to prescribe rules for the scheduling and conduct of hearings and other procedural matters related to the duties of his office. Such rules may provide for cross-examination of witnesses. (Ord. 1050-09 § 1; Ord. 979-08 § 1 (9/11/08); Ord. 550, 1990)

2.26.090 Duties of the examiner – Applications.

A. The examiner shall receive and examine available information, conduct fair and impartial public hearings, prepare a record thereof, and enter findings, conclusions, recommendations, or decisions as provided throughout the Sultan Municipal Code.

B. Except for appeals of administrative decisions, the examiner is empowered to act in lieu of such other officials, boards or commissions as may be assigned. Whenever existing ordinances, codes or policies authorize or direct other officials, boards or commissions to undertake certain activities which the examiner has been assigned, such ordinances, codes or policies shall be construed to refer to the examiner.

C. The hearing examiner is empowered consistent with SMC [2.26.125\(D\)](#) and rules adopted by the hearing examiner to reconsider decisions or recommendations of the hearing examiner. (Ord. 1236-16 § 2; Ord. 1050-09 § 1; Ord. 979-08 § 2 (9/11/08); Ord. 764-01; Ord. 550, 1990)

2.26.100 Reports of city departments.

On any land use issue coming before the examiner, the community development director shall coordinate and assemble the reviews of other city departments, governmental agencies, and other interested parties and shall prepare a report summarizing the factors involved. At least seven calendar days prior to the scheduled hearing, the report shall be filed with the examiner and copies thereof shall be mailed to the applicant and made available for public inspection. Copies thereof shall be provided to interested parties upon payment of reproduction costs. In the event that information to be provided by the applicant or other parties outside of city control has not been provided in sufficient time for filing seven days in advance of the hearing, the examiner may reschedule the hearing and notify interested parties. (Ord. 1347-21 § 2 ; Ord. 1236-16 § 3; Ord. 1050-09 § 1; Ord. 979-08 § 2 (9/11/08); Ord. 550, 1990)

2.26.110 Public hearing.

A. Before rendering a decision or recommendation on any application, the examiner shall hold at least one public hearing thereon.

B. Notice of the time and place of the public hearing shall be given as provided in the ordinance governing the application. If none is specifically set forth, such notice shall be given no less than 10 calendar days before the public hearing.

C. The examiner shall have the power to prescribe rules and regulations for the conduct of hearings under this chapter and also to administer oaths, and preserve order. (Ord. 1050-09 § 1; Ord. 979-08 § 2 (9/11/08); Ord. 821-03 § 1; Ord. 550, 1990)

2.26.120 Examiner's decision.

The hearing examiner shall render a written decision within 10 working days of the conclusion of a hearing, unless the applicant or appellant agrees to a longer period in writing. The decision shall include at least the following:

- A. Findings of fact and conclusions of law based upon and supported by the record;
- B. A decision on the application, or the appeal, to grant, deny, or grant with such conditions, modifications, and restrictions as the examiner finds reasonable to make the application or appeal compatible with its environment, the Sultan Municipal Code, the city of Sultan comprehensive plan, other official policies and objectives, and land use regulatory enactments. Examples of the kinds of conditions, modifications, and restrictions that may be imposed include but are not limited to additional setbacks, screenings in the form of fencing or landscaping, easements, dedications, or additional right-of-way and performance bonds;
- C. A statement of the date the decision will become final. (Ord. 1050-09 § 1; Ord. 979-08 § 3 (9/11/08); Ord. 764-01; Ord. 550, 1990)

2.26.125 Reconsideration of examiner's decision.

- A. All decisions or recommendations of the hearing examiner are subject to reconsideration, unless reconsideration is waived. Reconsideration is waived unless within seven calendar days of the date of mailing of the decision or recommendation, the applicant, the city, or a party of record submits a written request for reconsideration in accordance with rules issued by the hearing examiner.
- B. Pending reconsideration by the hearing examiner, a decision shall not be deemed final for the purpose of commencement of the period of time in which to commence an appeal.
- C. If reconsideration is waived because no timely request for reconsideration is made, the initial decision of the hearing examiner, subject to any right of appeal, shall be deemed final as of the eighth calendar day after the date of mailing of the decision.
- D. If a timely request for reconsideration is made, the hearing examiner shall grant or deny reconsideration within 10 working days of the date of receipt of the request for reconsideration. (Ord. 979-08 § 3 (9/11/08); Ord. 1050-09 § 1)

2.26.130 Notice of examiner's decision.

Not later than three working days following the rendering of a written decision, copies thereof shall be mailed to the applicant and to other parties of record in the case. "Parties of record" shall include the applicant and all other persons who specifically request notice by signing a register provided for such purpose at the public hearing, or otherwise provide written request for such notice. (Ord. 1050-09 § 1; Ord. 979-08 § 4 (9/11/08); Ord. 550, 1990)

2.26.140 Appeal from examiner's decision.

Examiner's decisions may be appealed to superior court by a party with standing in accordance with the procedures of Chapter [36.70C](#) RCW, or other court of competent jurisdiction as provided by law. (Ord. 1050-09 § 1; Ord. 979-08 § 6 (9/11/08); Ord. 979-08 § 1 (2/14/08); Ord. 550, 1990)

2.26.150 Council consideration.

Repealed by Ord. 1050-09. (Ord. 979-08 § 7 (9/11/08); Ord. 550, 1990)

2.26.160 Effect of council action.

Repealed by Ord. 979-08, 9/11/08. (Ord. 550, 1990)

2.26.180 Local improvement district assessment roll hearings.

A. As authorized by RCW [35.44.070](#), the city council hereby provides for delegating the duty of conducting public hearings for the purpose of considering and making recommendations on final assessment rolls and the individual assessments upon property within local improvement districts to a hearing examiner appointed under this section, and the hearing examiner is directed to conduct such hearings and make those recommendations to the city council.

B. All objections to the confirmation of the assessment roll shall be in writing and identify the property, be signed by the owners and clearly state the grounds of the objection. Objections not made within the time and in the manner prescribed and as required by law shall be conclusively presumed to have been waived.

C. The hearing examiner shall conduct the hearing to be commenced at the time and place designated by the city council, cause an adequate record to be made of the proceedings, and make written findings, conclusions and recommendations to the city council following the completion of such hearings, which may be continued and recontinued as provided by law whenever deemed proper by the hearing examiner, and the city council shall either adopt or reject the recommendations of the hearing examiner.

D. The recommendations of the hearing examiner shall be that the city council correct, revise, lower, change or modify the roll or any part thereof, or set aside the roll in order for the assessment to be made de novo, or that the city council adopt or correct the roll or take other action on the roll as appropriate, including confirmation of the roll without change. The recommendations of the hearing examiner shall be filed with the city clerk and be open to public inspection. All persons whose names appear upon the recommended assessment roll who timely filed written objections to their assessments shall receive mailed written notification of their recommended assessments.

E. Any persons who shall have timely filed objections to their assessments may appeal the recommendations of the hearing examiner regarding their properties to the city council by filing written notice of such appeal with the city clerk within 10 calendar days after the date of mailing of the hearing examiner's recommendations.

F. The appeal shall be based exclusively upon the record made before the hearing examiner and shall be considered by the city council at a public meeting. No new evidence may be presented. Arguments on appeal shall be either oral or written as the city council may order.

G. The city council shall adopt or reject the recommendations of the hearing examiner at a public meeting, after considering any appeals, and shall act by ordinance in confirming the final assessment roll.

H. Any appeal from a decision of the city council regarding any assessment may be made to the superior court within the time and in the manner provided by law.

I. The procedures set forth in this section are independent of and alternative to any other hearing or review processes heretofore or hereafter established by the city, and shall govern the conduct and review of final assessment hearings conducted before hearing examiners and related proceedings when authorized by the city council. (Ord. 1050-09 § 1; Ord. 979-08 § 8 (9/11/08); Ord. 775-01 § 1)

2.26.190 Variance criteria.

No application for a variance shall be granted unless the examiner finds:

A. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which their application was filed is located; and

B. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated; and

C. That such variance is necessary:

1. Because of special circumstances set forth in the findings relating to size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and

2. Because for reasons set forth in the findings, the variance as approved would contribute significantly to the improvement of environmental conditions, either existing or potentially arising from the proposed improvement. (Ord. 1050-09 § 1; Ord. 979-08 § 9 (9/11/08))

Chapter 2.27
BOARD OF ADJUSTMENT

Sections:

- ~~2.27.010 Purpose.~~
- ~~2.27.020 Establishment – Membership – Quorum.~~
- ~~2.27.030 Organization.~~
- ~~2.27.040 Terms of office.~~
- ~~2.27.050 Removal.~~
- ~~2.27.060 Vacancy filling.~~
- ~~2.27.070 Meetings.~~
- ~~2.27.080 Rules and records.~~
- ~~2.27.090 Powers and duties.~~
- ~~2.27.100 Appeals from board of adjustment.~~

~~2.27.010 Purpose.~~

~~The purpose of this chapter is to establish a board of adjustment for the city, to provide for its powers and duties, and to set forth its procedures. (Ord. 1235-16 § 1)~~

~~2.27.020 Establishment – Membership – Quorum.~~

~~Pursuant to RCW 35A.63.110, a board of adjustment is established, which shall consist of three members who are residents of the city or its urban growth area, to be appointed by the mayor and approved by the city council. No member of the board of adjustment shall be a member of the planning board or city council. A quorum of this committee shall be two members. (Ord. 1235-16 § 1)~~

~~2.27.030 Organization.~~

~~The board of adjustment shall elect a chairman and vice chairman from among its members and shall provide a secretary who need not be a member of the board. The planning staff shall provide assistance necessary to carry out the functions of the board of adjustment. (Ord. 1235-16 § 1)~~

~~2.27.040 Terms of office.~~

~~The initial appointments to the board of adjustment shall be staggered. One member shall be appointed for one year, one member shall be appointed for two years, and one member shall be appointed for three years. Thereafter, the terms of all members shall be for three years. (Ord. 1235-16 § 1)~~

~~2.27.050 Removal.~~

~~Any member of the board of adjustment may be removed by the mayor for neglect of duty or malfeasance in office. Neglect of duty shall include, but not be limited to, three consecutive unexcused absences for regular meetings, or a recurring pattern of unexcused absences, not necessarily consecutive. (Ord. 1235-16 § 1)~~

~~2.27.060 Vacancy filling.~~

Vacancies on the board of adjustment shall be filled by appointment of the mayor and approval by the city council. Appointment shall be for the unexpired portion of the vacated term. (Ord. 1235-16 § 1)

2.27.070 Meetings.

The board of adjustment shall meet on the first Thursday of any month as may be needed for conducting its business at 7:00 p.m., at City Hall, 310 Main Street, Sultan, WA, and all such meetings shall be open to the public in accordance with the provisions of Chapter 42.30 RCW, the Open Public Meetings Act. (Ord. 1235-16 § 1)

2.27.080 Rules and records.

The board of adjustment shall adopt rules for the transaction of its business and shall keep official minutes of its proceedings and shall keep a public record of its transactions, findings and determinations. (Ord. 1235-16 § 1)

2.27.090 Powers and duties.

A. The board of adjustment shall hear and decide the following:

1. Zoning Ordinance. To hear and decide appeals of orders, decisions, or determinations made by the planning staff regarding the application and interpretation of the zoning code, SMC Title 16;
2. Building and Construction Codes. To hear and decide appeals of orders, decisions, or determinations made by the building official or his or her designee regarding the application and interpretation of the building and construction codes adopted by SMC Title 15;
3. Sultan Municipal Code. To hear and decide appeals of orders, decisions or determinations made by city staff regarding the enforcement of other city codes.

B. Whenever existing ordinances, codes or policies authorize or direct the hearing examiner to undertake certain activities which the board of adjustment has been assigned by this chapter, such ordinances, codes or policies shall be construed to refer to the board of adjustment.

C. Majority Vote Required. The concurring vote of two members of the board of adjustment shall be necessary to set aside any order, decision, or determination regarding a requirement or condition placed on an appellant's development application or project for any matter upon which the board is required to pass under this chapter.

D. Inclusion of Findings of Fact. The board of adjustment shall, in making an order, decision, or determination, include, in a brief nonverbatim written record of the case, the findings of fact upon which the action is based. (Ord. 1235-16 § 1)

2.27.100 Appeals from board of adjustment.

A. Action Final. The action by the board of adjustment shall be final and conclusive unless within 21 days from the date of said action the original appellant or an adverse party makes application to the

Snohomish County superior court for a writ of certiorari, a writ of prohibition, or a writ of mandamus. (Ord. 1235-16 § 1)

Chapter 19.36
CLOSED RECORD DECISIONS AND APPEALS

Sections:

- 19.36.010 Appellate body for appeals.**
- 19.36.020 Consolidated appeals.**
- 19.36.030 Appeals – Filing.**
- 19.36.040 Appeals – Procedure.**
- 19.36.050 Judicial appeals.**
- 19.36.060 Actions not appealable.**

19.36.010 Appellate body for appeals.

A. Appeals to the Hearing Examiner. The following appeals shall be made to the hearing examiner as provided in Chapter [2.26](#) SMC:

1. Appeal of final Level I and II decisions;
2. Final director decisions made pursuant to this title;
3. Interpretations made by the director pursuant to this title other than determinations listed as not appealable.

B. Appeals to Courts beyond City Jurisdiction. The following appeals shall be made to the venue of competent jurisdiction beyond the city of Sultan:

1. Appeal of final Level III decisions of the hearing examiner;
2. Final Level IV decisions of the city council. (Ord. 1284-17 § 2 (Exh. B); Ord. 1144-12 § 2 (Exh. A))

19.36.020 Consolidated appeals.

A. All appeals on a particular application shall be handled in a consolidated appeal.

B. Subsection (A) of this section notwithstanding, appeals of environmental determinations under SEPA shall proceed as provided in SMC [17.04.240](#).

C. The following appeals of SEPA procedural and substantive determinations need not be consolidated with a hearing or appeal on the underlying action on a proposal:

1. An appeal of a determination of significance;
2. An appeal of a procedural determination made by the responsible official on a nonproject action. (Ord. 1284-17 § 2 (Exh. B); Ord. 1144-12 § 2 (Exh. A))

19.36.030 Appeals – Filing.

Administrative appeal of the approving authority's decision on a project permit application shall be governed by the following:

A. Standing. Only parties with standing may appeal a decision. Standing is limited to the following persons:

1. The applicant and/or the owner of property to which the decision is directed;
2. Another person aggrieved or adversely affected by the decision, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:
 - a. The decision has prejudiced or is likely to prejudice that person;
 - b. That person's asserted interests are among those that the approving authority was required to consider when it made the decision;
 - c. An administrative appeal decision in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the decision of the approving authority; and
 - d. The person has participated orally or in writing before the approving authority regarding the matter upon which review is requested.

B. Time to File. An appeal of a decision that is appealable to the city must be filed within the following time periods and conditions:

1. Fourteen calendar days after service or publication of the notice of decision under [SMC 19.34.120](#).
2. Appeals must be filed with the development services director before 5:00 p.m. on the last business day of the appeal period.

C. Computation of Time.

1. For the purposes of computing the time for filing an appeal, the day the decision is rendered shall not be included.
2. The last day of the appeal period shall be included unless it is a Saturday, Sunday, a day designated by RCW [1.16.050](#) or by the city's ordinances as a legal holiday, then it also is excluded and the filing must be completed on the next business day.

D. Content of Appeal. Appeals shall be in writing, be accompanied by an appeal fee as required in the city of Sultan annual fee schedule and shall contain the following information:

1. Appellant's name, address and phone number;
2. Appellant's statement describing his or her standing to appeal;
3. Identification of the application which is the subject of the appeal, including the project file number;
4. Appellant's statement of grounds for appeal and the facts upon which the appeal is based;
5. Appellant's statement that explains why the action is not consistent with the Sultan comprehensive plan, this code, or other provisions of law;
6. The relief sought, including the specific nature and extent, including an explanation of its consistency with the comprehensive plan and this code; and
7. A sworn statement that the appellant has read the appeal and believes the contents to be true, followed by the appellant's signature.

E. An answer need not be filed to an appeal. An appellant shall be confined to matters raised in the written appeal filed in accordance with subsection (D) of this section. A written appeal may be amended only upon the approval of the appellate body. Requests to amend an appeal must be filed with the director and served by the appellant upon all parties entitled to notice of appeal at least seven calendar days prior to the appeal hearing. Requests to amend shall not be freely granted.

F. Effect of Appeal. The timely filing of an appeal shall stay the processing of a proposal and the effective date of the final decision until such time as the administrative appeal process is complete as provided in this chapter or withdrawn.

G. Notice of Appeal. The administrator shall provide notice of the appeal to:

1. The applicant, or the person or entity designated by the applicant to receive notice;
2. Parties that have filed a special notification request in accordance with SMC [19.34.110](#), prior to rendering of the decision;
3. Agencies with jurisdiction; and
4. Identifiable parties who have provided addresses and submitted substantive written comments on the proposal prior to rendering of the decision.

H. The director shall document the date and manner by which any notice is given. (Ord. 1284-17 § 2 (Exh. B); Ord. 1144-12 § 2 (Exh. A))

19.36.040 Appeals – Procedure.

A. The appeal hearing shall be based on the record and no new evidence may be presented except as provided herein.

1. For director interpretations and Level I decisions and SEPA determinations for which there was no comment period, the record for appellate review may be supplemented by evidence of material facts that were not made part of the original record.

2. For Level II decisions and SEPA determinations for which there was a comment period, the record may be supplemented by additional evidence only if the additional evidence relates to:

- a. Grounds for disqualification of the approving authority that made the decision, when such grounds were unknown by the petitioner at the time the record was created;
- b. Matters that were improperly excluded from the record after being offered by a party to the approving authority; or
- c. Matters that were outside the jurisdiction of the approving authority that made the decision.

3. If the appellate body allows the record to be supplemented, it shall require the parties to disclose before the appeal hearing the specific evidence they intend to offer. If any party, or anyone acting on behalf of any party, requests records under Chapter [42.56](#) RCW relating to the matters at issue, a copy of the request and response thereto shall simultaneously be given to all other parties and the appellate body.

4. The appellate body may require or permit corrections of ministerial errors or inadvertent omissions from the record of the approving authority.

B. The scope of an appeal shall be limited to issues timely raised by the appellant before the approving authority. An appellant shall be deemed to have waived any objection that was not raised at a time and in a manner to allow the approving authority to make correction prior to issuance of the decision which is the subject of the appeal.

C. The appellate body shall review the record and may grant relief only if the appellant has carried the burden of establishing that one of the standards set forth in subsections (C)(1) through (6) of this section applies:

- 1. The approving authority engaged in unlawful procedure or failed to follow prescribed process, unless the error was harmless;

2. The decision of the approving authority is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by the approving authority with expertise;

3. The decision of the approving authority is not supported by substantial evidence when viewed in light of the whole record before the appellate body;

4. The decision of the approving authority is a clearly erroneous application of the law to the facts;

5. The decision of the approving authority is outside the authority or jurisdiction of the body or officer making the decision;

6. The decision of the approving authority violates the constitutional rights of the party seeking relief.

D. The appellant, respondent and city staff shall be permitted to address the appellate body and present argument upon the appeal. Such argument may not be used to introduce new evidence into the record except as provided in subsection (A) of this section.

E. Copies of the administrative appeal decision shall be sent to the appellant and to other parties of record as soon as practicable following the hearing at which the appeal is considered and, if applicable, within the time required by state law. (Ord. 1284-17 § 2 (Exh. B); Ord. 1144-12 § 2 (Exh. A))

19.36.050 Judicial appeals.

In no event shall judicial review be available until after action by the city has become final and after exhaustion of every other available appeal and remedy. (Ord. 1284-17 § 2 (Exh. B); Ord. 1144-12 § 2 (Exh. A))

19.36.060 Actions not appealable.

A. Generally. Only final actions or decisions of an approving authority may be appealed under this chapter.

B. Recommendations. Recommendations are not appealable except as part of the final decision or action being appealed.

C. Procedural Rulings. Interim procedural or other rulings during or as part of a review or decision making process by a reviewing or other officer under this code are not appealable except as part of the final decision or action. (Ord. 1284-17 § 2 (Exh. B); Ord. 1144-12 § 2 (Exh. A))