

PUBLIC HEARING_AB22-14_Appeal & Hearing Examiner Code Update

Public hearing dates: April 14, 2022

April 14, 2022

Held during the City of Sultan Council Meeting and presentation on file with the city clerk's office

Mayor Wiita opened the public hearing and read the public hearing procedures. The meeting was a hybrid with attendees both in person at City Hall Council Chambers and via Zoom Internet Conference Service. The following were in attendance: Councilmembers to include Morgan, Aldrich, Hund, Niegel, Sivewright, and Beeler. Staff to include City Administrator Ibershof, Public Works Director Morgan, Community Development Director Galuska, and City Clerk Pevey.

Staff Report

Community Development Director Galuska provided an update on the history of the appeal process. Language in the code made appeals difficult to understand and contradictory to the hearing examiner code. Main change is removing the Board of Appeals and moving all issues regarding code to the hearing examiner. The hearing examiner is knowledgeable in case law and offers a fair and consistent procedure. While making changes they updated the process of appointment of the hearing examiner to include allowing multiple hearing examiners to account for the wide range of topics that could be appealed. The cost should be commensurate to the appeal and this would allow the cost to be adjustable according to the appeal being presented.

Council Questions and Discussion

None noted

Public Comment

Colleen Rupke, Bryant Road, Sultan – Written comment expressing concerns (Exhibit A)

Judy Heydrick, Sultan – Written comments expressing concerns (Exhibit B)

Ron Kraut, Bryant Road, Sultan – Written comments expressing concerns (Exhibit C)

Rod Oster, Date Ave, Sultan; Issues with being blocked on Date Street due to school release traffic congestion; also expressed concerns with parking issues in the neighborhoods and traffic congestion on the Sultan Basin Road.

Staff Response to Comments

Mayor addressed the planning board recommendation to not change how the hearing examiner is removed. CM Beeler, CM Sivewright, & CM Morgan confirmed board member input is necessary and appreciates that the option was left in the code.

Motion

On a motion by Councilmember Beeler, seconded by Councilmember Sivewright, the public hearing regarding the Appeal & Hearing Examiner Code Update was closed; ~~Motion passed~~ Motion passed 6-0.

DocuSigned by:



Tami J. Pevey, City Clerk


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Russell Wiita, Mayor

**WRITTEN COMMENTS RECEIVED
AND ATTACHED AS REFERENCE**

From: [COLLEEN RUPKE](#)
To: [Tami Pevey](#); [Conner Morgan](#); [Stephanie Aldrich](#); [Cory Dearborn](#); [Joseph Hund](#); [Joe Neigel](#); [Christina Sivewright](#); [Jeffrey Beeler](#); [Russell Wiita](#); [Will Ibershof](#); [Andy Galuska](#)
Subject: Public Hearing -Hearing Examiner/Board of Adjustments - Public Comment
Date: Thursday, April 14, 2022 7:42:40 AM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To the Mayor and City Council:

This is my public comment for the Public Hearing regarding proposed Code Changes regarding the Hearing Examiner.

I strongly oppose the proposed code change which would give the Mayor the sole authority to remove the Hearing Examiner. This proposal is antithetical to our representative process. We have not given one person sole authority in our City. We have given a Council body majority and supermajority authority to legislate on behalf of the Citizens they represent. Most certainly with regard to development regulations and approvals of development.

The Hearing Examiner is bound to make decisions about proposed development solely on the basis of Sultan's Code and any higher governing State and Federal regulations. I have attended many of the Hearing Examiner hearings and have found him to be judicious and faithful to that duty. His only interest is in following the regulations.

Currently, our Mayor can dismiss the Hearing Examiner with the majority accompanying vote of our Council representatives. Divesting our Representatives of that authority and giving it solely to the Mayor is appalling. It certainly makes room for those of lesser character to use that authority to move a judicious Hearing Examiner out of the way so that one more development-friendly can be put in his place. Sultan has had difficulty in the past with City Officials making horrendous development arrangements and decisions outside of Hearing Examiner authority and behind closed doors. It resulted in substandard housing and roadways and ill-will at the least in the community.

I would definitely not like to see Sultan return to those days.

I urge you to follow the Planning Board's recommendation and NOT support the code change to give the Mayor sole authority to dismiss our Hearing Examiner. That is a decision that needs to be mitigated by a majority vote.

Sincerely,
Colleen Rupke
Bryant Road, Sultan

From: [Judy Heydrick](#)
To: [Tami Pevey](#); [Conner Morgan](#); [Stephanie Aldrich](#); [Cory Dearborn](#); [Joseph Hund](#); [Joe Neigel](#); [Christina Sivewright](#); [Jeffrey Beeler](#); [Russell Wiita](#); [Will Ibershof](#); [Andy Galuska](#)
Subject: April 14, 2022 Public Hearing -Hearing Examiner/Board of Adj.
Date: Wednesday, April 13, 2022 5:01:59 PM

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Council, Mayor and Staff

Please include my comments in the record for this Public Hearing.

Title 2.27 As a remedy for the Hearing Examiner/ Board of Adjustments confusion, I support the dissolution of the Board of Adjustments since the Hearing Examiner is the most qualified and experienced person to perform the city's quasi judicial functions.

Title 2.26.050 I strongly oppose the proposed code change allowing the Mayor **sole discretion** over the removal of the Hearing Examiner, **with or without cause**. Title 2.26.050 requires the majority of the Council to weigh in on the Examiner's removal for cause only, to ensure that removal is not an arbitrary decision by a mayor or any other disgruntled individual pressuring the mayor. The City's current Hearing Examiner has had a long association with the City of Sultan--at least 20 years or longer. His removal should not be any different than other key staffing position requiring Council's consent to remove ie; Finance Director, City Clerk, Public Works Director. Over the years, the community has benefited from the Hearing Examiners' decisions based on judicial impartiality and conformance with the city's legal framework.

I urge the Council to follow the Planning Board's recommendation to retain Title 2.26.050 unchanged "**The mayor with concurrent majority vote of the city council may remove an examiner from office for cause**". Council's continued involvement is essential for ensuring the Hearing Examiner's judicial independence, free of interference and personal agendas.

Thank you for your consideration,

Judy Heydrick

From: cohobanger@aol.com
To: [Tami Pevey](#)
Cc: [Russell Wiita](#); [Conner Morgan](#); [Stephanie Aldrich](#); [Joe Neigel](#); [Christina Sivewright](#); [Jeffrey Beeler](#); [Cory Dearborn](#); [Joseph Hund](#); [Andy Galuska](#); [Nate Morgan](#)
Subject: Comments Agenda Bill 22-19 and Agenda Bill 22-14
Date: Thursday, April 14, 2022 2:21:12 PM

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Mayor and City Council,

Please accept and incorporate these comments into the record tonight's meeting/hearing for Agenda Bill 22-19 and Agenda Bill 22-14.

Regarding Agenda Bill 22-19 Reduction of Transportation Impact Fees for Commercial Development:

The capital projects list referenced within the proposed ordinance for AB 22-19: "*May 14, 2020... capital projects list*", is not found within the list of approved transportation capital projects within the Capital Facilities Plan Element adopted by the city council in late 2021.

I was unable to open the city's link to the council meeting agenda containing the "*November 5, 2020... capital projects list*". I am guessing it does not align with approved transportation capital projects listed in the Capital Facilities Plan Element adopted by the city council in late 2021.

The proposed adopting ordinance states in part:

"WHEREAS, RCW 82.020.70(2) provides that impact fees shall be expended **only in conformance with the Capital Facilities Plan Element of the Comprehensive Plan**".

and

"WHEREAS, on **May 14, 2020 staff presented the capital projects list**, calculations for inclusion in the impact fee, and final proposed impact fee to the City Council at their regular meeting"

and

"WHEREAS, on **November 5, 2020 the City Council considered the Transportation Impact Fee Rate Analysis, the capital projects list** and the final proposed impact fee at its regularly scheduled public meeting"

Regarding the referenced 2020 capital projects lists:

Among the projects listed in the aforementioned lists, and therefore incorporated by reference as part of the proposed adopting ordinance, is the "T-75 East-West Arterial Connector #3 8th St to 135th St SE/Bryant Rd".

Preliminary analysis for the T-75 Bryant Connector was financed in 2020 by the city to facilitate potential construction. One of the city funded studies proposed excavating a steep slope to accommodate a new arterial road. The proposed excavation, city studies show, would result in the destruction of multiple homes in my neighborhood, including my home of twenty eight years.

To be clear, the Bryant Connector is not included in the adopted Capital Facilities Element, and therefore, must be excluded by reference from the proposed ordinance, and it's transportation capital projects list.

The referenced May 14, 2020 document from the council agenda states the following:

"As part of the City's updating of the Transportation Element, staff has begun updating the Capital Facilities Plan and Traffic Impact Fee. To mitigate impacts to additional traffic created by proposed development the City collects a traffic impact fee. The fee is calculated by calculating the capital projects required to improve the City's transportation system over the next ten years and charging a proportional amount based on the number of trips created. **An update was needed because the fee was last updated over a decade ago and since then the City's policy for traffic management have changed, projects on our list have been completed, and estimated project costs have changed.**" See pdf page

3: https://www.ci.sultan.wa.us/AgendaCenter/ViewFile/Agenda/_05142020-233

Perplexingly, when the city adopted the new Capital Facilities Element, it was decided that the city would not update the capital projects list to incorporate those projects listed in the referenced 2020 documents. Instead the city chose to retain the capital projects list from 2011. As part of the new Capital Facilities Element, the city also chose not to adopt the proposed new six-year 2022-2027 TRANSPORTATION IMPROVEMENT PLAN that was presented to the Planning Board. That plan included a list of ten high-priority projects. Seven of those transportation capital projects were included in the 2020 list. Instead, the city chose to re-adopt their six-year CIP 2011-2016 TRANSPORTATION IMPROVEMENT PLAN, minus the seven high priority capital transportation projects reviewed by the Planning Board. See pdf page 61:

<https://ci.sultan.wa.us/DocumentCenter/View/5650/Draft-2021-UPDATE-Chapter-9-Capital-Facilities-72221-PDF>

Further, only the following transportation projects are listed in our current Capital Facilities Plan Element, and therefore, these transportation projects **and no others**, may be subject to the ordinance and it's impact fees policy:

T-23, T-40, T-38, T-39, T-42a, T-47, T-49, T-51, T-52, T-53, T-55, T-57, T-58, T-59, T-60 and T-61.

EXHIBIT C

See pdf page 83 of the adopted Capital Facilities Element for the current list of adopted Transportation Capital Projects:

<https://ci.sultan.wa.us/DocumentCenter/View/5763/2021-UPDATE-Chapter-9-Capital-Facilities-Clean>

The following transportation projects are found within the ordinance's referenced 2020 capital projects list. They are not listed in our current Capital Facilities Plan Element, and therefore they cannot be subject to proposed ordinance policy, and must be stricken from the ordinance as part of the approved capital projects list. The following projects are not listed in the adopted capital facilities element:

T-24, T-25, T-26, T-29A , T-29B, T-31, T-32A , T-34A ,T-34, T-34C ,T-34D ,T-34, T-34 T-34G, T-35, T-36, T-41, T-43, T-46 T-48, T-49, T-62A, T-71, T-72, T-57, T-73, T-74, T-75, and T-76.

Please correct the ordinance language to address the realities of the city's approved transportation capital projects list, as adopted within the Capital Facilities Plan Element of the Comprehensive Plan. This should insure conformance with adopted Capital Facilities Element provisions.

Regarding Agenda Bill 22-14 _Appeal & Hearing Examiner Code Update:

I support the Planning Board's recommendation to retain Title 2.26.050 verbiage "The mayor with concurrent majority vote of the city council may remove an examiner from office for cause".

Sincerely,

Ron Kraut