

**BEFORE THE HEARINGS EXAMINER  
FOR THURSTON COUNTY**

In the Matter of the Application of the	)	NO. SUPT001030
	)	
<b>School of Excellence</b>	)	<b>FINDINGS, CONCLUSIONS</b>
	)	<b>AND DECISION</b>
For Approval of a Special Use Permit	)	(Temporary & Conditional)
_____	)	

**SUMMARY OF DECISION**

The Applicant is granted a temporary Special Use Permit to allow the school to remain open through the current academic year (no later than June 15, 2001). Prior to commencing operation, the Applicant shall execute an agreement with the county that acknowledges it began expanded school operations without appropriate permits and that commits the school to meeting minimum standards for safe operation of a school facility (including providing a suitable water supply, adequate fire protection, improved road access and a functioning septic system) in an expeditious manner. At the option of the county, the agreement may include a hold harmless and indemnification clause designed to protect the county and its agents from liability for any damage that may be caused to another as a consequence of operation of the school during the remainder of the academic year.

**SUMMARY OF RECORD**

Staff Present:

Nancy Pritchett; Thurston County Development Services, Zoning and Landuse  
Gary Duvall; Thurston County Environmental Health  
Joe Butler; Thurston County Development Services, Building and Fire Safety]  
Steve Johnson; Thurston County Roads and Transportation, Development Review

Testimony:

Nancy Pritchett  
Robert Hoffman; Applicant  
Ed Wiltsie; Applicant Representative, Engineer  
Jim Fleming  
Duke Mathews  
Vic Champlin  
David O'Brien

## LIST OF EXHIBITS

- EXHIBIT 1    Development Services Department Staff Report
- Attachment a            Notice of Public Hearing
- Attachment b            Special Use Permit Application
- Attachment c            Notice of Application Dated November 14, 2000
- Attachment d            Zoning/Site Map
- Attachment e            Site Plan
- Attachment f            List of Corrective Measures required by Thurston County Development Services to be in compliance with State and County health, safety, and land use codes.
- Attachment g            November 28, 2000 Letter from Gary Duvall, Environmental Health
- Attachment h            November 28, 2000 Letter from Steven Johnson, Development Review
- EXHIBIT 2    December 4, 2000 Comment Letter from James and Nancy Fleming
- EXHIBIT 3    October 31, 2000 Letter from Edward A. Wiltsie, Jerome W. Morrisette & Associates Inc.
- EXHIBIT 4    Children's School of Excellence Site Plan – Revised for Well Location
- EXHIBIT 5    November 30, 2000 Topographic Survey of Improvements – Lot 5 of Large Lot Subdivision LL-0877
- EXHIBIT 6    Road Usage and License and Maintenance Agreement Recorded September 5, 1997
- EXHIBIT 7    November 20, 2000 Response to Comment Letter of November 15, 2000 from Edward A. Wiltsie, Jerome W. Morrisette & Associates, Inc.

## BACKGROUND

The School of Excellence (Applicant) owns a ten-acre site south of Cedar Grove Lane on Horizon Pioneer Road. The school has a total building area of about 7,600 square feet. The school is located in a Rural Residential Resource zone that allows one dwelling unit per five acres. Schools are allowed in this zone only if a special use permit is approved. The School of Excellence began operations without applying for permits from the county. There are no records of permits for land use, buildings, water or septic. The county closed the School on October 31, 2000, for a number of violations detailed in Exhibit 1, Attachment F. On November 8, 2000, the School filed an application for a Special Use Permit that was heard by the Hearing Examiner on December 4, 2000.

## FINDINGS AND CONCLUSIONS

1. The School of Excellence is located south of Cedar Grove Land on Horizon Pioneer Road. It is a federally recognized 501 C 3 organization that is not affiliated with any religious institution. The school provides 110 students and staff a facility for K – 12 education. The School was not legally established in the Rural Residential Resource zone. The Applicant seeks approval of a Special Use Permit to help correct the illegally established use. *Testimony of Robert Hoffman; Exhibit 1, Staff Report & Attachment B, Application.*
2. There are serious code violations associated with continued operation of a school at the subject property. Some of these violations significantly increase the risk of harm to students and staff at the facility. These include lack of a safe drinking water supply, lack of adequate septic facilities and lack of adequate fire protection. *See, e.g., Exhibit 1, Attachment f.* Although there was no testimony opposed to approval of the application, residents and property owners in the vicinity expressed concerns about the functioning of septic systems, problems with road access, increased noise, increased dust, and increased traffic. *Testimony of Mr. Matthews, Mr. Champlain Mr. O'brien & Mr. Fleming.*
3. Parents of students and students who attended the School of Excellence in the fall of 2000 need to be informed if the school will continue to operate in the year 2001 and for the duration of the academic year<sup>1</sup>. It is not possible to resolve all code violations prior to January of 2001. Although the school recently expanded, the school has operated for about seven years without an incident of harm to students caused by the facilities. It is the intent of the Applicant to comply with all code requirements. *Testimony of Mr. Hoffman.*

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<sup>1</sup> The Hearing Examiner takes notice that the failure to provide a stable educational learning environment could have a negative impact on a student. Although there are public schools available to these students – as well as other private school options – a number of parents and students selected the School of Excellence in the fall of 2000 as their preferred learning environment. It is often difficult to enter into another school mid-way through the academic year.

## DECISION

A temporary Special Use Permit to operate a school for up to 110 students and staff is **GRANTED, to begin January 8, 2001**, subject to the following conditions:

1. Operation of the school shall cease at the end of the current academic year or June 15, 2001, whichever first occurs. Continuation of the Special Use Permit beyond that time may be granted by the Hearing Examiner if, following a public hearing, the Applicant can demonstrate that there is substantial progress toward correction of all violations of all codes including health, fire and building codes applicable to the facility and if the Applicant meets his burden of proof to show compliance with all criteria for granting a special use permit. If this burden is not met, the continued operation of the school shall not be allowed.
2. The Applicant shall execute a ‘Hold Harmless’ agreement with the county that acknowledges it began expanded school operations without appropriate permits and that commits the school to meeting minimum standards for safe operation of a school facility including providing a suitable water supply, adequate fire protection, improved road access and a functioning septic system in an expeditious manner. At the option of the county, the agreement may include a hold harmless and indemnification clause designed to protect the county and its agents from liability for any damage that may be caused to another as a consequence of operation of the school during the remainder of the academic year.
3. The use of the school shall be limited to 110 students and staff.
4. No food preparation for service to others allowed on premises.
5. The Applicant shall initiate a compliance plan and time schedule to address the code violations described in Attachment f to Exhibit 1 including actions to obtain building permits, obtain approval of Group A water supply, install a septic system, provide improved lighting, undertake cleanup of property to remove hazardous items, install a stormwater conveyance improvements, obtain approval of a School Facility Plan per WAC 246-366-040 and pave the access road to the facility up to and including the driveway.

Prior to commencement of operations, the Applicant shall comply with the following conditions through the current academic year:

6. Bottled water shall be provided for all students and staff.
7. Portable toilets shall be made available for student use and shall be pumped and maintained on a regular schedule. Existing on-site bathrooms shall be closed for all but staff use.

8. Fire extinguishers shall be provided in each building.
9. Any additional conditions of operation deemed necessary and essential to safe operation of the school facility by the county's building official, fire marshal or environmental health official. Additional conditions of operation shall be put in writing and delivered to the Applicant prior to January 2, 2001.

**SEE CLARIFICATION OF CONDITIONS DATED DECEMBER 29, 2000**

Decided this 22<sup>nd</sup> day of December 2000.

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THEODORE PAUL HUNTER, Hearing Examiner