

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of the)	NO. SUPT 010556
)	
School of Excellence)	FINDINGS, CONCLUSIONS
)	AND DECISION
For Approval of a Special Use Permit)	
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SUMMARY OF DECISION

The Applicant's request for a Special Use Permit to construct and operate a private school on a ten-acre site south of Cedar Grove Lane on Horizon Pioneer Road is **GRANTED**, subject to conditions. The school would have an enrollment of up to 110 students, faculty and staff and would provide education for kindergarten through twelfth grade.

SUMMARY OF RECORD

Request:

The Children's School of Excellence (Applicant) requests a Special Use Permit to construct and operate a private school for up to 100 students, providing a curriculum-based education for kindergarten through twelfth grade.

Hearing Date:

An open record hearing on the request was held before the Hearing Examiner of Thurston County on August 6, 2001.

Testimony:

At the open record hearing the following individuals presented testimony under oath:

Mike Kain, Thurston County Development Services Department
Steve Johnson, Roads and Transportation Services
John Ward, Thurston County Environmental Health Department
Edward Wiltsie, Representative for Applicant
Sandy Mackie

James Fleming
Mike Morgan

Exhibits:

At the hearing the following exhibits were admitted:

EXHIBIT 1 Development Services Department Staff Report

Attachment a	Notice of Public Hearing
Attachment b	Special Use Permit Application
Attachment c	Zoning/Site Map
Attachment d	Site Plan
Attachment e	July 17, 2001 Letter from Gary Duvall, Environmental Health
Attachment f	July 19, 2001 Letter from Steven Johnson, Development Review

EXHIBIT 2 Comment Email from Alan and Dana Spivey and Mike and Francie Morgan dated August 2, 2001

EXHIBIT 3 Roadway License and Maintenance Agreement from James and Nancy Fleming

Upon consideration of the testimony and exhibits submitted at the open record hearing, the Hearing Examiner enters the following Findings and Conclusions:

FINDINGS OF FACT

1. The Applicant requested a Special Use Permit to continue operation of a private school providing a curriculum-based education for up to 100 students from kindergarten through twelfth grade.¹ The school is located on a five-acre site south of Cedar Grove Lane on Horizon Pioneer Road.² *Exhibit 1, pages 1 and 4.*

¹ The School of Excellence began operating in Fall 2000 prior to obtaining the appropriate permits from the County to operate a school in the RRR 1/5 zone. Thurston County staff became aware of the school on October 16, 2000. No permits had been issued for the school and a site inspection revealed a variety of violations. The school administrator was informed that the school would need to close until it was brought into compliance with County standards. The school was closed on October 31, 2000, and the Applicant submitted a Special Use Permit shortly thereafter. A temporary Special Use Permit was granted allowing the Applicants to operate the school until July 3, 2001 subject to conditions. The permit required approval by the Hearing Examiner in order to continue operation of the school beyond July 3, 2001. The current application seeks approval for continued operation of the school.

2. The subject property is zoned Rural Residential Resource—One Dwelling Unit per Five Acres (RRR 1/5). Academic schools are allowed in this zone upon approval of a Special Use Permit. *Exhibit 1, page 2.*
3. The surrounding properties are zoned RRR 1/5 and are a combination of pasture, trees, and homes on large lots. Properties to the east of Horizon Pioneer Road are zoned RR 1/2. There are single-family residences located on adjacent properties to the north, south, east, and west of the school. *Exhibit 1, pages 2 and 3.*
4. The subject property for the school site is approximately five acres. It currently contains two 1,800 square foot manufactured classroom buildings, a circular driveway, and an area for parking. The Applicant proposes to build a new 1,152 square foot wood frame building for administration and restrooms. The total proposed floor area is 4,752 square feet. The school will be in operation Monday through Friday from 8.00 a.m. to 4:00 p.m. and will service a maximum of 100 students and 10 faculty and staff. *Exhibit 1, pages 1, 2, and 6.*
5. One of the existing manufactured buildings is located across the share property line of Tax Parcels 21603410200 and 21603410300. A Boundary Line Adjustment is needed to ensure that no buildings are across property lines and all setback requirements are met. *Exhibit 1, page 2.* Once the boundary line is adjusted, the Applicant will meet all zoning requirements, including setbacks and bulk requirements. With an expected 14 percent of the site area covered by impervious surfaces, the property is within the Thurston County Code requirements, which allows 60 percent coverage. *Exhibit 1, page 4.*
6. TCC 20.44 requires one parking space for each classroom and office and one parking space per each five high school students of designed capacity. The minimum requirement for the proposed school capacity is 14 parking spaces. The Applicant plans to have 23 parking spaces for faculty, staff, high school students, and visitors. *Exhibit 1, pages 2 and 7.*
7. TCC 20.54.070(3) requires that any portion of a school site that abuts upon a residential use be screened in such a manner as to reduce the noise generated by activities on school grounds. There is adequate existing screening between the school and the properties to the south, east, and west. Currently, a buffer of second growth Douglas Fir at least 80 feet wide exists along the northern boundary of the school grounds. These trees provide some visual screening. However, there are gaps in the screening that the Applicant proposes to fill in with fencing or additional trees where necessary. The fencing would be placed along the property line on the lot where the residence presently exists. The remaining gaps may fill in with vegetation as it matures or could be planted with native

² The Applicant owns 10 acres, but only five acres are being used for the school building. The legal description of the site is a portion of Section 3, Township 16 North, Range 1 East. W.M.; also know as Tax Parcel No. 21603410300.

vegetation to enhance the existing screening. *Exhibit 1, pages 2 and 5; Testimony of Mr. Wiltsie; Testimony of Mr. Fleming.*

8. Access to the school would be from Cedar Grove Lane, a private road. An internal circular one-way driveway will provide access off of Cedar Grove Lane and will be designed to accommodate emergency vehicle access. The Applicant is currently in negotiations with the landowners along Cedar Grove Lane to secure a Roadway License and Maintenance Agreement. This document addresses many of the concerns of the residents. However, Mr. Fleming noted that asphalt paving was not required. Since the document is a private agreement between private parties, the Hearing Examiner noted that issues could be negotiated as appropriate prior to signing but that it would be inappropriate for the Hearing Examiner to specify which issues are important to address. *Exhibit 1, pages 2 and 4; Exhibit 3; Testimony of Mr. Fleming; Statements of Hearing Examiner.*
9. The area is not currently served by public utilities and there are no plans to extend services to the area. The Applicant is required by the Department of Ecology to develop a Group A water supply. An on-site septic system to serve the school must be approved by Thurston County. The Applicant has submitted these plans and is awaiting final approval. The County testified that stormwater would be contained on-site in a manner consistent with the County's Drainage Design and Erosion Control Manual. *Exhibit 1, page 5.*
10. The Thurston County Roads & Transportation Services noted that all traffic and storm drainage issues were resolved with the temporary use permit and recommended preliminary approval. *Exhibit 1, Attachment f.*
11. The Public Health and Social Services Department stated that the proposal is not expected to impact ground or surface waters, and recommended approval subject to conditions. *Exhibit 1, Attachment e.* At the hearing, Mr. Fleming pointed out that the letter was based on a ten-acre site, while the school actually occupies only five acres. Mr. Ward of the Health Department explained that the ten-acre figure is correct, as Applicant's property is in fact ten acres, with five acres being used for the school and the remaining five for a septic system. *Testimony of Mr. Ward.* Additionally, Mr. Wiltsie testified that the septic system design is based on the number of people expected to use the site rather than the number of acres. *Testimony of Mr. Wiltsie.*
12. Written notice of the public hearing was sent to all property owners within 500 feet of the site and notice was published in The Olympian on July 27, 2001, at least 10 days prior to the hearing. *Exhibit 1, page 3, Attachment a.*
13. Mike and Francie Morgan and Alan and Dana Spivey submitted a joint letter expressing concern about the amount of traffic and lack of safety measures on Horizon Pioneer Road, a County road near the school. Mr. Wiltsie testified that the school's enrollment is currently less than 50 students, so school does not provide bus service so that no children

will have to walk along the road to get to a bus stop. Mr. Johnson of Roads & Transportation Services testified that the road would be placed on the Comprehensive Plan review list for upgrades. *Testimony of Mr. Johnson; Testimony of Mr. Wiltsie; Exhibit 2.*

14. Mr. Fleming expressed concern regarding the amount of water used by the school and the possibility the school system may overwhelm his septic drainfield and thereby disrupt his system. Mr. Wiltsie testified that the school is expected to use 10 gallons of water per person per day. A residence averages 120 gallons per bedroom per day, for a total of 360 gallons per day for a three-bedroom residence such as Mr. Fleming's. Thus, the school is expected to use about the same amount of water as three three-bedroom residences. The County testified that the proposed system meets or exceeds standards set forth in WAC 246-272 and Article IV of the Sanitary Code. The County recommended that no pesticides or fertilizers be applied to the ten-acre site and that no hazardous materials be stored on the site. *Testimony of Mr. Fleming; Testimony of Mr. Wiltsie; Exhibit 1, Attachment e; Testimony of Mr. Ward.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for Special Use Permits pursuant to Chapter 36.70 of the Revised Code of Washington and Chapter 20.54 of the Thurston County Code. Chapter 36.70 RCW authorizes the Hearing Examiner to hear and decide cases in the manner determined by County ordinances and consistent with state law. The Thurston County Board of Commissioners requires the Hearing Examiner to conduct a public hearing and render a decision based on the record within ten (10) working days of the close of the hearing. The decision must be consistent with the general and specific criteria for review set forth in Chapter 20.54 of the Thurston County Code.

Special Use Permit Criteria for Review

- A. *20.54.040 General Standards.* In addition to the specific standards set forth hereinafter with regard to particular special uses, all uses authorized as special uses shall meet the following standards:
 1. *Plans, Regulations, Laws.* The proposed use at the specified location shall comply with the Thurston County Comprehensive Plan and all applicable Federal, State, Regional and Thurston County laws or plans. The policies related to this goal state that schools should be sited to consider transportation and health needs as follows:
 - a. Where practical, schools should be located along non-arterial roads in order to minimize potential conflicts between pedestrian and vehicular traffic.

- b. Availability of sewer and water facilities should also be considered in siting schools, as well as location in areas not subject to exposure from hazardous/dangerous materials, poor air quality or safety standards.
 - c. School siting and expansion should avoid prime agricultural land.
2. *Underlying Zoning District.* The proposed use shall comply with the general purposes and intent of the applicable zoning district regulations and sub-area plans. Open space, lot setback, and bulk requirements shall be no less than that specified for the zoning district in which the proposed use is located unless specifically provided otherwise in this chapter.
3. *Location.* No application for a special use shall be approved unless a specific finding is made that the proposed special use is appropriate in the location for which it is proposed. This finding shall be based on the following criteria:
- a. Impact. The proposed use shall not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic condition, parking, public property or facilities, or other matters affecting the public health, safety and welfare. However, if the proposed use is a public facility or utility deemed to be of overriding public benefit, and if measures are taken and condition imposed to mitigate adverse effects to the extent reasonably possible, the permit may be granted even though said adverse effect may occur.
 - b. Services. The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities or services existing or planned to serve the area.

B. *Sign, Landscaping & Parking Standards*

- 1. Signs. TCC 20.54.040(5) limits signs for special use projects to “no more than one two-faced sign not to exceed 32 square feet per side.”
- 2. Landscaping. TCC 20.54.070(1)(b) requires any portion of a school site which abuts upon a residential use to be screened in such a manner as to reduce the noise generated by activities on the school grounds.
- 3. Parking. For education facilities, TCC 20.44 requires a minimum of one (1) parking space for each classroom and office and one parking space for each five (5) high school students of designed capacity.

C. 20.54.070 Use-Specific Standards

1. For private schools, in addition to complying with the minimum lot size requirements in the zoning district in which it is located, the minimum lot area of a private school in excess of four (4) students shall be determined by the Approval Authority.”
2. The density shall not exceed one hundred (100) students per one (1) acre of ground nor shall there be more than (1) square foot of floor area to two (2) square feet of ground area.
3. Any portion of the site that abuts upon a residential use shall be screened in such a manner as to reduce the noise generated by activities on school grounds.
4. The height of any auditorium or gymnasium shall be set by the approval authority.

Conclusions Based On Findings

1. **The proposed project, as conditioned, will meet the General Standards of TCC 20.54.**
 - 1.1 **The proposed project, with conditions, will comply with all State and County laws and plans.** The site is not located along an arterial road and is not designated as prime agricultural land. The Thurston County Roads & Transportation Services and the Public Health and Social Service Department recommend approval of the project, subject to conditions. Conditions will ensure that the Applicant installs a water supply and septic system that meets the Health Department’s requirements for a school facility. Conditions of approval are necessary to help ensure that adequate potable water and septic disposal will be provided. *Findings of Fact Nos. 1, 2, 8, 9, 10, and 14.*
 - 1.2 **The proposed project, with conditions, will comply with all zoning district regulations.** The site has the capacity to comply with all zoning requirements, including setbacks and bulk requirements. It is expected that 14 percent of the site area will be covered by impervious surfaces, which is well within County requirements. Conditions of approval are necessary to ensure that the Applicant will do a Boundary Line Adjustment to correct setbacks for existing buildings. *Finding of Fact No. 2 and 5.*
 - 1.3 **The proposed project, with conditions, is appropriate for the location for which it is proposed.** With conditions, the project should not have any undue adverse effects on adjacent properties. There is currently existing screening between properties to the south, west, and east. Landscaping will be required to screen the site from adjacent properties to the north. While the project may

generate additional traffic, the Applicant is entering into a road maintenance agreement with the owners of Cedar Grove Lane. The road will be sufficient for emergency access. Additionally, the County is planning to put Horizon Pioneer Road on the list for road upgrades. The site is not currently served by public utilities and there are no plans to extend services to the area. Therefore, the proposed project will be required to develop a Group A water supply and on-site septic system to serve the school. Stormwater will be contained on-site consistent with the Drainage Design and Erosion Control Manual for Thurston County. Conditions of approval are necessary to ensure that appropriate water system and wastewater disposal/treatment systems are in place prior to occupancy of the school. *Findings of Fact Nos. 7, 8, 9, 10, 13, and 14.*

2. **The proposed project, with conditions, will meet sign, landscaping and parking requirements.** The Applicant will be required to meet the requirements of TCC 20.54.040(5) and TCC 20.40 for any sign installed for the school. The Applicant will be required to provide a site-obscuring buffer along the property line between the school property and Mr. Fleming's property. The Applicant's proposal exceeds the number of parking spaces required by TCC 20.44 for educational facilities. Conditions of approval are necessary to ensure these standards will be met. *Findings of Fact Nos. 6 and 7.*
3. **The proposed project, with conditions, will meet use-specific standards for private schools.** The five-acre site meets minimum lot size requirements of the zoning district. The proposed density of 100 students per five acres, or 20 students per acre, is well below the maximum of one hundred students per acre. The proposed floor area of 4,752 square feet over five acres fits within the required floor to ground area ratio. Existing trees provide a buffer to the north, east, and west. The proposal does not include an auditorium or gymnasium. Conditions of approval are necessary to ensure the number of students does not exceed the projected number of students. *Findings of Fact Nos. 1 and 4.*

DECISION

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

- A. School buildings are currently located across property lines of Tax Parcel Nos. 21603410300 and 21603410200. Applicant must complete a Boundary Line Adjustment so that no buildings cross property lines and all buildings meet setback requirements.
- B. Prior to or in conjunction with the issuance of any building permits, all regulations and requirements of the Thurston County Roads and Transportation Services Department and the Thurston County Fire Marshall shall be met.

Additionally, the following conditions of the Thurston County Environmental Health Department shall be met:

1. Based on the sewage system design information submitted by the project engineer, the facility shall be limited to 110 students, teachers, and staff.
 2. No pesticides or fertilizers shall be applied to the ten-acre site.
 3. Prior to occupancy of the school, a sewage system design must be approved by the county, installed by a certified septic system installer, and granted final construction approval by Thurston County Public Health and Social Services Department.
 4. Prior to occupancy, the proposed water system must be approved by the Washington State Department of Health as a Group A public water source.
 5. There shall not be any food preparation (such as school lunches) on-site.
- C. One sign is allowed with a maximum size of thirty-two (32) square feet per side. The sign shall not protrude over the street right-of-way or be erected in a way that interferes with the visibility of traffic control devices or street name signs. Signs shall be unlit and shall use nonflashing, nonreflective materials. Colors shall be nongarish and consistent with residential character. Any freestanding sign will require a building permit.
- D. A landscape buffer shall be planted along the south property line to provide a sight obscuring screen. This buffer shall consist of trees or shrubs at least four (4) feet high at time of planting which will provide a year round sight-obscuring buffer within three years. The Applicant shall not cut trees along the north property lines and shall fill in spaces along the property line between the subject property and Mr. Fleming's property with a fence or vegetation, as deemed necessary and appropriate by Thurston County Development Services.
- E. Lighting shall be designed and shall function in a manner that shields direct light from adjoining streets and properties. Lighting shall be limited to security lighting.
- F. The site shall be maintained in a neat and orderly manner at all times.
- G. Parking lot design shall conform to the requirements of TCC 20.44.
- H. All development on the site shall be in substantial compliance with the approved site plan. Any expansion or alteration of this use will require approval of a new or amended Special Use Permit. The Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.

- I. This project was reviewed and approved based on a sewage system design and building capacity for 100 students and ten faculty and staff. The Applicant shall submit a count of students and faculty and staff to Thurston County Development Services at the beginning of each school year to verify that the school does not exceed this capacity. It is noted that, as a commercial system, the septic system must be inspected on a monthly basis. Any failures must be corrected within 24 hours.

Decided this 10th day of August 2001.

THEODORE PAUL HUNTER
Hearing Examiner for Thurston County

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