

**BEFORE THE HEARINGS EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. SUPT 971921
)	
Marijke Deutscher)	FINDINGS, CONCLUSIONS
)	AND DECISION
For Approval of a Special Use Permit)	<i>REVISED UPON</i>
)	<i>RECONSIDERATION</i>
_____)	

SUMMARY OF DECISION

The Applicant's request for a Special Use Permit to construct and operate a 7600 square foot daycare center on a 39,039 square foot site at 3910 Yelm Highway Southeast is **GRANTED**, subject to conditions. *Upon reconsideration, the amount required for mitigation of traffic impacts is reduced based on new evidence provided by the County. The Decision on Reconsideration is a modification of the original decision as indicated by language that is in bold and italics (see Exhibit List; Finding of Fact No. 9; and Condition A-3).*

SUMMARY OF RECORD

Request

Marijke Deutscher (Applicant) requests a Special Use Permit to construct and operate a daycare center for up to 75 children.

Hearing Date

An open record hearing on the request was held before the Hearing Examiner of Thurston County on October 1, 2001. *The County filed a Motion for Reconsideration on October 24, 2001. The request presented new information based on discovery of a mistake of fact presented by the County during the hearing. The motion requested a revision to the traffic impact mitigation fee. No one objected to this revision.*

Testimony

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

Robert Smith, Thurston County Development Services Department
Gordie Kelsey, Thurston County Roads and Transportation Services
Jean Carr, Representative for Applicant

Exhibits

At the hearing the following exhibits were admitted:

EXHIBIT 1 Development Services Department Staff Report

- Attachment a Notice of Hearing
- Attachment b Zoning/Site Map
- Attachment c Special Use Permit Application
- Attachment d Site Plan
- Attachment e Landscape Plan
- Attachment f December 11, 1997 Comment Memorandum from Roads and Transportation Services
- Attachment g August 10, 2001 Comment Memorandum from Roads and Transportation Services with attached traffic mitigation documents
- Attachment h September 7, 2001 Comment Letter from Thurston County Public Health and Social Services Department
- Attachment i June 25, 2001 Comment Letter from Tom Hill with the City of Olympia

EXHIBIT 2 Public Comment Email from Samuel and Lana Avera dated September 20, 2001

EXHIBIT 3 Memorandum to Hearing Examiner from Robert Smith, dated October 24, 2001, with attachments (3 pages).

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

FINDINGS OF FACT

1. The Applicant requested a Special Use Permit to construct and operate a daycare facility. The facility would be located at 3910 Yelm Highway Southeast.¹ *Exhibit 1, Staff Report, page 1.*
2. The subject property is zoned Residential Four to Eight Dwelling Unit Per Acre (R 4-8). Daycare facilities are allowed in this zone upon approval of a Special Use Permit. *Exhibit 1, Staff Report, page 2.*
3. Properties surrounding the subject property include single-family residences to the north, an undeveloped parcel owned by the City of Olympia to the east, the Indian Summer Golf and Country Club development to the south, and undeveloped residential zoned property to the west. *Exhibit 1, Staff Report, page 2.*
4. The subject property for the daycare center is 39,039 square feet. The Applicant proposes to build a new 7,600 square foot wood frame building and construct a driveway, parking lot for 19 vehicles, sidewalk, fenced outdoor play area, and storm drainage pond. The daycare would be in operation Monday through Friday from 6:30 a.m. to 6:30 p.m. *Exhibit 1, Attachment c.* No sign is proposed. *Exhibit 1, Attachment d; Exhibit 1, Attachment e.*
5. TCC allows a maximum of 50 percent impervious surfaces on the site. The proposal complies with impervious surface requirements. *Testimony of Mr. Smith.* The proposal complies with setback requirements. *Testimony of Mr. Smith.*
6. TCC 23.38 requires daycare facilities to provide one parking space for each staff member plus one parking space for every ten children. *TCC 23.38.100.* The proposed daycare would serve a maximum of 75 students and would have 11 employees on-site.² The Applicant proposes to provide 19 parking spaces. *Exhibit 1, Attachment c; Testimony of Mr. Smith.* TCC 23.38 also requires bicycle parking. Daycare facilities must provide one Class I bicycle space and one Class II bicycle space. *TCC 23.38.100.*
7. TCC 23.36 requires landscaped visual screening around the perimeter of the site, interior parking lot landscaping, and landscaping throughout the rest of the site. *TCC 23.36.160; TCC 23.36.180.* A Type II visual screen is required to create visual separation between incompatible land uses, such as between commercial/office and residential zones. *TCC 23.36.060.* Here, Type II visual screens would be required along the west, north, and east boundaries of the site. A Type III visual buffer is required along the Yelm Highway

¹ The legal description of the site is a portion of the Southeast Quarter of the Southwest Quarter of Section 32, Township 18 North, Range 1 West, W.M.; also know as Tax Parcel No. 11832340600.

² The Application (Exhibit 1, Attachment c) states that there would be ten staff members. The planning staff analyzed the parking requirements for eleven staff members. The proposal meets the requirements of the TCC regardless of the actual number of proposed staff members.

street frontage on the south end of the site. *TCC 23.36.060(L); TCC 23.36.160*. The Applicant proposes landscaping the west side of the site, the south side of the infiltration pond abutting the parking lot, the outdoor play area, and the south side of the site abutting Yelm Highway. *Exhibit 1, Attachment d*. The Applicant proposes Type II buffers along the west and north property lines, and a six foot high chain link fence enclosing the landscaped outdoor play area and along most of the east side of the property.³ *Exhibit 1, Attachment d; Exhibit 1, Attachment e*. The Applicant proposes a filter fabric fence around the west, north, and east sides of the site, but proposes no other landscaping along most of the east property line. *Exhibit 1, Attachment d*.

8. The Applicant proposes to connect to City of Olympia domestic water and sanitary sewer lines. *Exhibit 1, Staff Report, page 1; Testimony of Mr. Smith*. The City of Olympia stated on June 25, 2001 that the water and sewer system was available and approved for use by the Applicant. *Exhibit 1, Attachment i*. Stormwater would be contained on-site in a wet pond and infiltration pond on the northwest corner of the site in a manner consistent with the Drainage Design and Erosion Control Manual. *Exhibit 1, Staff Report, page 1; Exhibit 1, Attachment g*.
9. The Thurston County Roads & Transportation Services Department stated in its memorandum of December 11, 1997 that the then existing access to the site would need to be abandoned, and the access located on the western property line. Included in its comments were the following: the Department required the pavement section to have eight inches of gravel base instead of the proposed six inches; the Department required that stormwater runoff not alter nor impact any existing drainage or other properties; and the Department required the completion of the review of the Preliminary Drainage Plan prior to the open record hearing. *Exhibit 1, Attachment f*. The Department granted preliminary approval of the site, drainage facility design, and erosion control in its memorandum of August 10, 2001. *Exhibit 1, Attachment g*. The Department conducted a traffic impact analysis and found that the proposal would generate 75 PM peak hour trips, or 9.9 trips per square foot. *Exhibit 1, Attachment g*. Traffic mitigation fees were allocated based on the traffic impact analysis. *Exhibit 1, Attachment g*. ***In a letter dated October 24, 2001, County Associate Planner Mr. Robert Smith asked for reconsideration of the recommended conditions related to mitigation of traffic impacts. His letter states there was a “miscalculation” in the figure given at the hearing and asks for a reduction of 50 percent of the recommended mitigation fee. The revised amount would total \$103,763. No one objected to this revised amount. The County made a mistake that would be corrected with a modification to the conditions of approval. Exhibit 3.***
10. The Public Health and Social Services Department recommended approval of the proposal, subject to conditions of approval. Conditions related to connection to Olympia

³ The Site Plan and Landscape Plan do not indicate whether the fence would be chain link, however, the Staff Report and testimony of Mr. Smith indicate the Applicant proposed a chain link fence.

sewer and water supplies and compliance with the Integrated Pest Management Plan in the maintenance and care of the site. *Exhibit 1, Attachment h.*

11. The site does not contain any identified critical areas and is not within the jurisdiction of the Shoreline Master Program. *Exhibit 1, Staff Report, page 2.* The project is exempt from environmental review under SEPA. *Exhibit 1, Staff Report, page 2.*
12. The Transportation chapter of the Thurston County Comprehensive Plan contains objectives and policies that are applicable to the proposal. These objectives and policies include providing mobility for all citizens regardless of age, handicap or income, in part by providing “convenient and secure bicycle parking” at commercial or other employment sites wherever possible. *Thurston County Comprehensive Plan Chapter 5, Policy B-4.*
13. There was public comment indicating concerns about the potential for added noise to the neighborhood, increased traffic, and the potential for pollution to a greenbelt abutting the property. *Exhibit 2.*
14. Written notice of the public hearing was sent to all property owners within 500 feet of the site on September 18, 2001. Notice was published in *The Olympian* on September 21, 2001. *Exhibit 1, Staff Report, page 2; Exhibit 1, Attachment a.*

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.

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 conditions, 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 conditions imposed to mitigate adverse effects to the extent reasonably possible, the permit may be granted even though the adverse effects 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 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 thirty-two square feet per side.”

C. *20.54.070 Use-Specific Standards*

10. Day-Care Centers and Nursery Schools.

- a. All such uses shall be located so as to have access adequate to accommodate pedestrian and vehicular traffic to and from the use as determined by the approval authority. To assist in making this determination, each Applicant shall provide an estimate of the maximum expected trip generation, the distribution of these trips by mode and time of day.
- b. When such a use is located in or adjacent to a residential district, screening in the form of plantings, walls, or fencing shall be provided of such a nature and density as determined by the approval authority.
- c. Parking space shall be provided as follows:
 - i. If the day-care facility also serves as a private residence, a minimum of two off-street parking spaces shall be provided for the residents.

- ii. In addition, off-street parking for staff and for pickup and delivery of children shall be provided as follows:
 - (A) Staff parking shall comply with Chapter 20.44.
 - (B) Off-street pickup and delivery spaces shall be provided commensurate with the number of children served by the facility so that the neighborhood will not be adversely impacted or children endangered.

Conclusions Based On Findings

According to TCC 20.54.020, in order for the Hearing Examiner to grant the Applicant's request for a Special Use Permit Application, the Thurston County Board of Commissioners has determined the use must meet all the applicable standards contained in TCC Chapter 20.54 and all other applicable requirements of Title 20.

- 1. **The proposed project, as conditioned, will meet the General Standards of TCC 20.54.**
 - a. **The proposed project, with conditions, will comply with all State and County laws and plans.** The proposal satisfies relevant provisions of the Comprehensive Plan by providing bicycle parking. *Finding of Fact No. 12.*
 - b. **The proposed project, with conditions, will comply with all zoning district regulations.** The proposal satisfies open space, lot, setback, and bulk requirements for the R 4-8 zoning district. *Finding of Fact No. 5.*
 - c. **The proposed project, with conditions, is appropriate for the location for which it is proposed.**
 - i. **The proposed use will not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety and welfare.** Although public comment reflects concern that the proposal could increase noise, and traffic and pollution, the landscaping and distance from adjacent residential properties are sufficient to mitigate the potential for added noise; payment of traffic mitigation fees as a condition to approval would sufficiently mitigate the daycare's impact on traffic; and no evidence has indicated the proposal would result in pollution. *Findings of Fact Nos. 3, 7, 9, 11, and 13.* The proposal provides adequate parking for vehicles and bicycles. *Finding of Fact No. 6.* A condition is needed to ensure that pesticides and herbicides are not applied on-site to protect the safety and health of children served by the daycare. *Finding of Fact No. 10.*

- ii. **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.** Water and sewer utilities are available, and the proposal would not impose an undue burden. *Finding of Fact No. 8.*
2. **The proposed project, with conditions, will meet sign requirements.** No sign is proposed. *Finding of Fact No. 4.*
 3. **The proposed project, with conditions, will meet use-specific standards for day-care centers and nursery schools.** Studies of the traffic impact of the proposal have been conducted. *Finding of Fact No. 9.* The Applicant proposes to include screening from the adjacent residential zoned properties. A condition is necessary to protect surrounding residential zoned properties. *Findings of Fact Nos. 3 and 7.* The Applicant proposes to provide 19 off-street parking spaces for staff and for pickup and delivery of children. *Findings of Fact Nos. 4 and 6.*

DECISION

A Special Use Permit to operate a daycare center for up to 75 children and 11 employees is **GRANTED**, subject to the following conditions, *with modifications upon reconsideration*:

- A. Prior to or in conjunction with the issuance of any building permits and operation of the facility, all regulations and requirements of the December 11, 1997 and August 10, 2001 Thurston County Roads and Transportation Services Department comment memoranda and the September 7, 2001 Thurston County Environmental Health Department comment letter shall be met. This requirement includes the payment of the following traffic mitigation fees listed or referenced in the August 10, 2001 Thurston County Roads and Transportation Services Department comment memorandum:
 1. The Applicant shall provide traffic mitigation to Thurston County in the amount of \$26,966, to be paid prior to final approval of the project.
 2. The Applicant shall provide traffic mitigation to the City of Olympia in the amount of \$37,311, to be paid prior to final approval of the project.
 3. The Applicant shall provide traffic mitigation to the City of Lacey in the amount of ~~\$79,371~~, **\$39,686**, to be paid prior to final approval of the project.
- B. Prior to operation of the facility the Applicant shall install at least one (1) Type I bicycle space and one (1) Type II bicycle space, as defined in TCC 23.02.180. The design and placement of the bicycle spaces shall be reviewed at the time of building permit application.

- C. Prior to operation of the facility all landscaping identified in the landscape plan shall be installed. In addition, a six-foot high solid wood fence shall be installed along the east property line in locations where a Type II vegetative buffer is not provided.
- D. Maintenance and care of the site shall comply with the Integrated Pest Management Plan on file with the Thurston County Public Health and Social Services Department. No chemical pesticides or herbicides shall be applied to the landscaping or the grounds on the site at any time.
- E. All development on the site shall be in substantial compliance with the approved site plan. Any expansion or alteration of this use, beyond that initially approved by the Hearing Examiner, will require approval of a new or amended Special Use Permit. The Development Services Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.

Decided this 30th day of October 2001.

THEODORE PAUL HUNTER
Hearing Examiner for Thurston County

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