



COUNTY COMMISSIONERS

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 District One
 Sandra Romero
 District Two
 Karen Valenzuela
 District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
 FOR THURSTON COUNTY**

In the Matter of the Application of)	
)	
)	SUPT NO. 2014100809
)	
Yelm Community Schools)	
)	
)	
For a Special Use Permit)	FINDINGS, CONCLUSIONS,
)	AND DECISION
)	

SUMMARY OF DECISION

The request for approval of a special use permit to add three modular classroom buildings totaling 5,376 square feet and to recognize the existing legally nonconforming Southworth Elementary School as a permitted special use is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request

Yelm Community Schools (Applicant) requested approval of a special use permit to add three modular classroom buildings totaling 5,376 square feet. The request would also recognize the existing legally nonconforming Southworth Elementary School, constructed at 13849 SE Yelm Highway, in Yelm, Washington since 1970, as a permitted special use.

Hearing Date

The Thurston County Hearing Examiner conducted an open record public hearing on the request on June 16, 2014.

Testimony

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

- Tony Kantas, Resource Stewardship Department Planning Staff
- Dawn Peebles, Environmental Health Department
- Arthur Saint, P.E., Public Works Department

Erling Birklund, Applicant Representative

Exhibits

At the open record public hearing, the following exhibits were admitted in the record:

- Exhibit 1 Resource Stewardship Planning & Environmental Section Report including the following attachments:
- Attachment a Notice of Public Hearing
 - Attachment b Master Application
 - Attachment c Special Use Permit Application
 - Attachment d Notice of Application, dated May 28, 2014
 - Attachment e Project Narrative
 - Attachment f Site Plan
 - Attachment g April 3, 2014 Memorandum from Arthur Saint, Development Review Section
 - Attachment h March 25, 2014 Letter from Dawn Peebles, Environmental Health
 - Attachment i March 26, 2014 Letter from Washington State Department of Ecology
 - Attachment j Traffic Generation Worksheet
- EXHIBIT 2 Full size site plan (one sheet), dated January 2, 2014
- EXHIBIT 3 Engineered Abbreviated Drainage and Erosion Control Report, prepared by Morrisette & Associates, Inc., dated February 5, 2014
- EXHIBIT 4 Copies of color photos of the site taken by Resource Stewardship Staff during a site visit, undated
- EXHIBIT 5 Correspondence from United States Fish and Wildlife Service, dated May 8, 2014

Based upon the record developed at hearing, the Examiner enters the following findings and conclusions.

FINDINGS

1. The Applicant requested a special use permit to add three modular classroom buildings totaling 5,376 square feet to Southworth Elementary School at 13849 SE Yelm Highway, in Yelm, Washington.¹ The request would also recognize the legally nonconforming existing school. *Exhibit 1, page 1; Exhibit 1, Attachments b, c, e, and f.*
2. The existing Southworth Elementary School structure was built in 1970 and expanded in 1976. Thurston County adopted zoning for the subject property on September 1, 1980, rendering the land use legally nonconforming. Since the expansion, the school has placed seven portable classroom buildings on the property. These previous portables were reviewed administratively, consistent with Thurston County Code (TCC) 20.56.030(2). The proposed 5,376 square feet of additional building floor area combined with the 2,442 square feet already added within the last five years would exceed the five percent threshold for administrative review of expansion of non-conforming uses. The instant proposal is the first application for special use permit associated with Southworth Elementary School. *Exhibit 1, page 2; Exhibit 2; Exhibit 1, Attachment e; Birkland Testimony.*
3. Southworth Elementary serves the Evergreen Valley and northwest Yelm. The property is used exclusively for public education. Hours of school operation are 8:00 am to 3:30 pm Monday through Friday with limited after school activities. Approximately 630 students and teachers attend the site during business hours. The relatively flat subject property is developed with existing permanent structures and portable classroom structures totaling 64,569 square feet. There is no surface water on-site and the proposed project site is not within a well head protection area. The 13.34-acre site also contains paved and gravel parking areas, a sports field, and open lawn and play areas. Off-site mature trees line the property's east and west boundaries. Surrounding land uses consists of: JBLM to the west; single-family houses on larger lots to the east and south; and Yelm Highway/State Route 510 to the north, with Centralia Power utility facilities across the highway. Due to dense mature vegetation on-and off-site, the school site is not visible to any adjacent residentially zoned parcels. *Exhibit 1, page 2; Exhibit 2; Exhibit 1, Attachments c and e; Exhibit 3.*
4. The subject property has an Urban Reserve (UR 1/5) zoning designation, which district is intended to provide for low density residential uses, agriculture, forestry, conservation, and associated uses in areas contiguous to urban growth areas capable of eventually supporting urban density development. The UR 1/5 zone allows academic facilities subject to special use permit review. The County's zoning ordinance allows expansion of legally nonconforming uses up to 15% through the special use permit process, following an open record public hearing. *TCC 20.09D.010; TCC 20.54.015(2); Exhibit 1, page 2.*
5. The UR 1/5 zone allows special uses on lots that are five acres or greater in size. Maximum building height is 35 feet. Non-residential structures such as those proposed are required to be set back as follows: 35 feet from arterials or highways; 25 feet from collector, local, or private roads; and ten feet from side and rear lot boundaries.

¹ The legal description of the subject property is a portion of Section 11, Township 17 North, Range 1 East, W.M.; also known as Tax Parcel Number: 21711430400. *Exhibit 1, page 2.*

Maximum lot coverage by building on parcels ten acres in size or greater is 20,000 square feet. *TCC 20.09D.050; TCC 20.07.030(1)*.

6. The three proposed modular buildings contain two classrooms each. The Applicant intends to install one of the three prior to September 2014 adjacent to a cluster of five existing portable structures and a restroom in the southwest portion of the school site. The two additional portables would be placed in the southeast portion of the school site sometime within the following two years. Placement of each would involve construction of a 1,792 square foot portable building, an approximately 185 square foot ADA ramp, 350 square feet of sidewalk, extending water and septic service lines to existing on-site facilities, and construction of dry well to mitigate roof runoff within approximately 4,500 square foot construction limits. The proposal includes adding a compost amended soil mix to undeveloped, disturbed areas. The application narrative indicates that the new classrooms are needed in part to address increasing school population; however the Applicant representative testified at hearing that the new classrooms are required to address recent legislation that reduced maximum student to teacher ratios in kindergarten through third grade classrooms to 17:1. *Exhibit 1, Attachment e; Exhibit 3; Birkland Testimony*.
7. The 13.34-acre subject property complies with the minimum site size for special uses. The tallest of the existing buildings is the gymnasium/cafeteria, at 21 feet in height. The proposed portables would be 14 feet tall. The portable proposed to be built prior to September 2014 would be 22.3 feet from the site's western boundary, exceeding the required setback, and more than a hundred feet from other boundaries. Resource Stewardship Staff indicated that all requirements, including setbacks and bulk dimensional standards, would be satisfied by the proposal. Existing, legally nonconforming structures already exceed the maximum lot coverage by building, occupying approximately 11% of the site. Through the County Code's nonconforming use expansion provisions, it is possible to expand the already nonconforming site coverage by structure. At full build out, the three new structures would increase site coverage by building to occupy 69,945 square feet, which would be approximately 12% of the site.² *Exhibit 1, page 4; Kantas Testimony; Exhibit 2*.
8. The subject property is accessed via Yelm Highway/State Route 510. No changes to site access, internal road ways, or existing paved parking are proposed. Approximately 58 vehicles visit the site per day. The school currently has 60 parking spaces as well as ample open grass and gravel areas for overflow parking. No significant increase in traffic to the site is anticipated because the majority of students are bussed to school and because the proposal is primarily intended to reduce student/teacher ratios and only secondarily to address increasing student population. Planning Staff found that there is adequate parking on-site to provide parking for the new classrooms consistent with the off-street parking requirements of TCC 20.44. *Exhibit 1, pages 2, 5; Exhibit 1, Attachment c; Birkland Testimony; Exhibit 4*.

² The Examiner notes that the figures reported for total site coverage by non-residential building and total impervious surface differ between the application and the site plan. *Exhibit 1, Attachment c; Exhibit 2*. For the purposes of conducting special use review, the Examiner used the larger figures from the site plan.

9. The school's domestic water is from the Southworth Elementary Group A public water system and sanitary waste is treated by an existing large on-site septic system (LOSS). Staff from the Thurston County Public Health and Social Services Department, Environmental Health Division (EHD), reviewed the project for compliance with health related codes, including sewage disposal and water supply. EHD Staff indicated that the current septic system operates well under capacity. Staff noted that because the LOSS is under the regulatory authority of the Washington State Department of Health, EHD must receive confirmation from the State Department of Health that the existing system has capacity to serve the proposed expansion. In order for the State to conclude its assessment, the Applicant is required to submit information on average daily flows from November 2013 through February 2014. Subject to this and other conditions, EHD recommended approval. *Exhibit 1, Attachment h; Peebles Testimony.*
10. The County's Public Works Department reviewed the applications, site plan, and engineered abbreviated drainage and erosion control report for compliance with stormwater and erosion control requirements and road standards. Public Works Staff recommended approval subject to conditions. *Exhibit 1, page 5; Exhibit 1, Attachment g; Saint Testimony; Exhibit 3.*
11. Use-specific standards for schools approved by special use permit require screening along all site boundaries that border residential uses in order to protect residences from noise. *TCC 20.54.070(1)(b)*. There are residential uses to the east and south of the subject property. Staff noted that the existing developments on-site cannot be seen from any residence due to on- and off-site mature trees; however, a recommended condition of approval would require a landscaped buffer along all site boundaries for the life of the use. *Exhibit 1, pages 2, 4, and 6; Kantas Testimony.*
12. The Washington State Department of Ecology submitted comments regarding the correct procedures to be followed in the event that any soil contamination is discovered during construction and indicating that a National Pollutant Discharge Elimination System (NPDES) permit may be required. *Exhibit 1, Attachment i.*
13. Effective May 9, 2014, the U.S. Fish and Wildlife Service (USFWS) listed the Mazama pocket gopher as a threatened species under the Endangered Species Act. The subject parcel contains potential pocket gopher habitat. The Applicant contacted USFWS to provide information about the proposal and staff from the federal agency conducted a site visit to inspect the project area. On May 8, 2014, USFWS issued a letter to the Applicant indicating that the proposal presented a very low risk of killing the gopher and other protected prairie species due to the developed nature of the project site. Resource Stewardship Staff indicated that the USFWS letter addresses the County's concern regarding potential impacts to the protected species and satisfies recommended condition of approval number seven. *Exhibit 1, page 4; Exhibit 5; Kantas Testimony.*
14. The proposal is exempt from State Environmental Policy Act (SEPA) review. *TCC 17.09.055; WAC 197-11-800 ; Exhibit 1 page 2.*

15. Written notice of the public hearing was posted on-site on June 5, 2014. Notice of hearing was sent to owners of all parcels within 500 feet of the site and published in The Olympian on June 6, 2014. *Exhibit 1, Attachment A; Exhibit 1, page 2*. No public comments were submitted. *Exhibit 1, page 5; Kantas Testimony*.
16. Resource Stewardship Staff submitted the position that the existing school facilities together with the proposed additional portable classrooms would comply with the use-specific standards for schools approved by special use permit. Staff further submitted that the project would be consistent with applicable policies of the Comprehensive Plan, would not have adverse impacts on surrounding properties, and would not result in increased demand on any public service or infrastructure. *Kantas Testimony; Exhibit 1, pages 3-6*.

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to decide special use permit applications under Sections 2.06.010 and 20.54.015 of the Thurston County Code, and Section 36.70.970 of the Revised Code of Washington.

Special Use Permit Criteria for Review

The Hearing Examiner may approve an application for a special use permit only if the following general standards set forth in TCC 20.54. 040 are satisfied:

- A. 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.
- B. Underlying Zoning District. The proposed use shall comply with the general purposes and intent of the applicable zoning district regulations and subarea 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.
- C. 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:
 1. 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 said adverse effects may occur.

2. 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.

Use Specific Standards

Pursuant to TCC 20.54.070(1), the following use-specific standards apply to academic school uses:

- a. Minimum Site Size.
 - i. For Public Schools. Minimum site size shall be as required by the Superintendent of Public Instruction.
 - ii. For Private Schools. In addition to complying with the minimum lot size requirements of the zoning district in which located, the minimum lot area of a private school in excess of four students, shall be determined by the approval authority.

The density shall not exceed one hundred students per one acre of ground nor shall there be more than one square foot of floor area to two square feet of ground area.
- b. Any portion of the site which abuts upon a residential use shall be screened in such a manner as to reduce the noise generated by activities on the school grounds.
- c. The height of any auditorium or gymnasium shall be set by the approval authority.

Conclusions Based on Findings

1. As proposed, both acknowledging the existing school and the allowing construction of the additional portable classrooms would be consistent with the purpose and the majority of the bulk dimensional requirements of the UR1/5 zone. Despite already exceeding the lot coverage by building standard, the County Code allows legally nonconforming uses to expand up to 15%. The site has more than ample room to accommodate the proposed additional buildings, which would not be visible from adjacent properties. The record indicates that expansion of the existing school to reduce class sizes would be consistent with the Thurston County Comprehensive Plan and all known applicable laws and regulations. *Findings.*
2. The proposal would permit an expansion of an existing elementary school to allow reduction in student to teacher ratio and to accommodate future demand. Minimal increase in student population is anticipated, and any increase in students is anticipated to result in negligible increased traffic to the site. Existing vegetation on- and off-site would screen the new structures visually such that they, with the existing buildings, would not be visible to adjacent properties. The record indicates that the proposal would not negatively impact the Mazama pocket gopher. With conditions, the project would have no adverse affects on surrounding properties or the public welfare. *Findings .*
3. As conditioned, the new buildings would be served by existing on-site utilities without creating demand for additional services. The record contains no evidence of burden to surrounding properties or public services and infrastructure. *Findings .*

4. As conditioned, both the existing school and the proposed additional portable structures comply with the use-specific standards applicable to schools approved through the special use permit process at TCC 20.54.070.1. Legally nonconforming uses are allowed to expand up to 15% in area through special use permit review pursuant to TCC 20.56.030(3). The site exceeds the minimum size for a special use in the zone and is adequate to the use. With the additional classrooms, the student population would not exceed one hundred students per one acre of ground, and there is less than one square foot of floor area to two square feet of site area. The portions of the site that abut residential zoning currently provide or with conditions would in the future provide adequate screening to reduce noise and visual impacts to adjacent residences. Existing and proposed structures comply with the height limits of the underlying zone and do not require special review or approval. *Findings.*

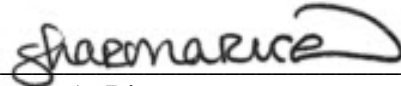
DECISION

Based on the preceding findings and conclusions, the requested special use permit to add three modular classroom buildings totaling 5,376 square feet and to recognize the existing legally nonconforming Southworth Elementary School as a permitted special use is **GRANTED** subject to the following conditions:

1. A Construction Stormwater Permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. It is the Applicant's responsibility to obtain this permit if required.
2. Prior to the release of the building permit, confirmation must be received from Washington State Department of Health indicating the existing system has the capacity to serve this project as proposed. In order for Washington State Department of Health to complete their assessment, the large on-site sewage system average daily flows from November 2013 through February 2014 must be submitted.
3. Prior to the release of the building permit, a plan review by the Food & Environmental Services Section is required. The application is available at <http://www.co.thurston.wa.us/health/ehle/schools>.
4. Prior to the release of final occupancy approval, a pre-opening inspection must be completed by the Food & Environmental Services Section.
5. A natural or landscaped buffer a minimum of five feet wide shall be maintained along all property lines and rights-of-way.
6. Outdoor lighting fixtures shall be oriented to avoid direct glare onto adjacent properties and rights-of-way while providing adequate safety.
7. Prior to any soil disturbance and/or construction, the Applicant shall demonstrate compliance with the Endangered Species Act.

8. All development on the site shall be in substantial compliance with the approved site plan. Any expansion or alteration of this use beyond that approved herein will require approval of a new or amended special use permit.

DECIDED June 23, 2014.



Sharon A. Rice
Thurston County Hearing Examiner

THURSTON COUNTY
PROCEDURE FOR RECONSIDERATION AND APPEAL
OF HEARING EXAMINER DECISION TO THE BOARD

NOTE: THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Resource Stewardship Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

C. STANDING All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$638.00** for a Request for Reconsideration or **\$846.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



Project No. _____ Appeal Sequence No.: _____

Check here for: RECONSIDERATION OF HEARING EXAMINER DECISION

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

Check here for: APPEAL OF HEARING EXAMINER DECISION

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW _____
 on this _____ day of _____, 20___, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on _____, 20___, by _____ relating to _____

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance _____
2. Platting and Subdivision Ordinance _____
3. Comprehensive Plan _____
4. Critical Areas Ordinance _____
5. Shoreline Master Program _____
6. Other: _____

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

 APPELLANT NAME PRINTED

 SIGNATURE OF APPELLANT

Address _____

 Phone _____

Please do not write below - for Staff Use Only:

Fee of \$638.00 for Reconsideration or \$846.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Resource Stewardship Department this _____ day of _____, 20___.