

**OFFICE OF THE HEARING EXAMINER**

**THURSTON COUNTY**

**REPORT AND DECISION**

**PROJECT NO.:** 2006102927 South Bay Daycare and School

**SEQUENCE NO.:** 16 113824 ZM

**TAX PARCEL NO.:** 11806130102

**LOCATION ADDRESS:** 3325-33<sup>rd</sup> Lane N.E., Olympia, WA 98506

**APPLICANT/OWNER:** Greg and Dana Mueller  
3118-33<sup>rd</sup> Lane N.E.  
Olympia, WA 98506

**PLANNER:** Scott McCormick, MES, Associate Planner

**SUMMARY OF REQUEST:**

Amendment to a previously approved Special Use Permit to convert the authorized use of an existing, vacant, 2,998 square foot structure from a professional office to a school and daycare facility. A total of 14 parking spaces are proposed for the new use. The site is located at 3325-33<sup>rd</sup> Lane N.E., Olympia.

**SUMMARY OF DECISION:** Request approved, subject to conditions.

**DATE OF DECISION:** June 15, 2017

**PUBLIC HEARING:**

After reviewing the Resource Stewardship Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on June 5, 2017, at 10:20 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT "1"** - **Resource Stewardship Staff Report**
- Att. A** - **Notice of Public Hearing**
- Att. B** - **Zoning Map and Arterial Photo**
- Att. C** - **Master Application and Special Use Permit Application**
- Att. D** - **Letter from Applicant**
- Att. E** - **Project Description**
- Att. F** - **Site Plan**
- Att. G** - **Building Design**
- Att. H** - **Floor Plan**
- Att. I** - **Septic Information**
- Att. J** - **Trip Generation Analysis**
- Att. K** - **Notice of Application with Adjacent Property Owners List**
- Att. L** - **Memo from County Public Health and Social Services Dept.**
- Att. M** - **Letter from Nisqually Indian Tribe**
- Att. N** - **Letter from Nisqually Indian Tribe**
- Att. O** - **Email from Dawn Peebles to Applicant**
- Att. P** - **Decision for Site dated December 7, 2009**
- Att. Q** - **Memo from Public Works**
- Att. R** - **Email from Applicant dated June 2, 2017**
- Att. S** - **Photographs of Public Notice Sign**

**The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.**

SCOTT McCORMICK appeared, presented the Land Use and Environment Review Section Staff Report, and introduced Exhibit Q, a Public Works Memorandum; Exhibit R, an email in support of the application; and Exhibit S, photographs of the public notice sign. The project provides 14 parking spaces for the new use and a special use permit for the entire center was approved in 2009. The structure to the south of this structure is presently used as a daycare. The amendment to the special use permit would change an existing structure from an office use to a daycare and school. The change will not create traffic impacts, and will require the same parking and landscaping. Few changes are necessary other than internal remodeling of the building. The site is located near a commercial district that is within a residential zone. The commercial zone is to the north. Staff recommends approval subject to 12 conditions. The present school has 56 students now.

DAWN PEEBLES, Thurston County Public Health and Social Services Department, appeared and testified that they reviewed the project and found that it complies with all code requirements. She recommends imposition of Conditions 2, 3, and 4 in the Staff Report. She also noted a correction to the email address in Condition 3 and replaced Exhibit I with a new letter.

GREG MUELLER, applicant, appeared and testified that he previously owned another property adjacent to the present property. He sold it and it has no connection to the commercial use. They will change the office use to childcare. A previous public hearing approved the overall project six years ago. The only change is that they added a water fountain. He has reviewed conditions of approval and finds that all are acceptable except for providing the school facility plan in Condition 3. It is not needed for older children.

DANA MUELLER appeared and testified that this is the type of business needed in the neighborhood and there is a waiting list for children.

LIA BENDER HARTMAN appeared and corrected the address as 3325 and not 3323. She currently uses the preschool and has for about a year and a half. She lives in the house behind the building. She is a partner with the local school and is also a business owner. She can understand the demographics in the area. A lot of new homes have been built and she receives calls daily for the use. She understands business and the demands of business and believes the building will be filled very quickly. There is a wait list and a large demand for after school care. The school now has 56 students and they can have 118 on the playground. With the new building they will have more property.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 10:40 a.m.

**NOTE:** A complete record of this hearing is available in the office of the Thurston County Resource Stewardship Department.

### **FINDINGS, CONCLUSIONS, AND DECISION:**

#### **FINDINGS:**

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. A Mitigated Determination of Nonsignificance (MDNS) was issued on January 15, 2009, following review pursuant to the State Environmental Policy Act (SEPA), for the overall project. The environmental determination was not appealed and became final on February 5, 2009. SEPA review is not required for a change of use from professional office to school and daycare.
3. Written notice of the public hearing was sent to all property owners within 500 feet of the site on May 26, 2017 and to others who had requested notice. Notice of the public hearing was published in The Olympian on May 26, 2017, at least ten (10) days prior to the hearing (Attachment a). Notice was posted on-site on May 26, 2017.

4. In a Decision dated December 7, 2009, former Thurston County Hearing Examiner James M. Driscoll approved a special use permit that authorized construction of two structures on an irregularly shaped, three acre parcel of property located at 3247 South Bay Road N.E., Olympia. The Decision approved construction of two, 2,998 square foot buildings, one of which the applicant, Greg Mueller, proposed to use for a daycare business and the second for an office building. The approved site plan shows Building B, the daycare, located in the southern portion of the site, and Building A, proposed for an office building, located adjacent to 33<sup>rd</sup> Lane N.E. The approved site plan also shows the underlying parcel located at the southwest quadrant of the intersection of South Bay Road and 33<sup>rd</sup> Lane. A storm drainage facility and parking area separates the buildings from South Bay Road.
5. Subsequent to Examiner Driscoll's Decision, both buildings were constructed and a daycare use currently occupies Building B, but Building A remains vacant.
6. The applicant requests an amendment to the previously approved special use permit to convert the use of the vacant Building A from a professional office use to a school and daycare facility. The applicant proposes 14 parking spaces for the new use, all within the existing, joint parking area serving both buildings.
7. The Findings, Conclusions, and Decision of Examiner Driscoll, set forth in Case Number SUPT 2006102927, are hereby incorporated into this Decision by this reference as if set forth in full.
8. The site remains within the Residential LAMIRD One Dwelling Unit per Two Acre (RL-1/2) zone classification in unincorporated Thurston County. The RL-1/2 classification authorizes academic schools and daycare facilities subject to a special use permit. To change the use of Building A from offices to a school and daycare facility, the applicant has properly submitted an application for the amendment of the previously approved special use permit.
9. The applicant proposes a maximum school/daycare of 56 students in Building A. Section 20.44.030 of the Thurston County Code (TCC) requires one parking space for every staff member and one parking space for every ten children plus adequate drop-off facilities. The present parking area provides 28 parking spaces (14 for each building) that exceeds parking requirements. The site also provides an adequate drop-off area.
10. Landscaping of the overall project was approved in the 2009 Examiner's Decision, and a condition of approval requires a showing that all required landscaping is installed prior to issuance of a final occupancy permit.

11. Section 20.54.040 TCC sets forth the criteria for special use permits. The 2009 Examiner's Decision concludes that the overall project satisfies all special use criteria to include the daycare use in Building B. The applicant has made no changes to the exterior of Building A other than the addition of a water fountain. Thus, the site plan and proposed, new use will comply with the Thurston County Comprehensive Plan and all applicable Federal, State, Regional, and County laws or plans. Furthermore, the use will comply with the applicable RL-1/2 zone classification.
12. Examiner Driscoll previously determined that the proposed use of a daycare in Building B is appropriate in its proposed location. The present proposal to locate a school and daycare facility in Building A likewise satisfies all location criteria.
13. Adequate facilities, utilities, and services within the area can adequately serve the school/daycare. A Group A public water system provides both domestic water and fire flow to the site, and a Trip Generation Analysis concludes that the change of use from office to a daycare/school will result in a net reduction of project trips during the critical p.m. peak period. Development Review staff determined that the existing stormwater management system will adequately address stormwater runoff as no additional impervious surfaces are proposed.
14. Section 20.54.070(1) TCC sets forth additional standards for academic schools. Public school criteria do not apply since the applicant proposes a private school and daycare facility. Said section provides that the approval authority determines the minimum lot area, for a private school, and that the school density cannot exceed 100 students per one acre of ground. Furthermore, the school can provide no more than one square foot of floor area to two square feet of ground area. In the present case the overall site contains three acres and the applicant proposes 56 students. Thus, all criteria for private schools are met to include minimum lot area. Noise and activities on school grounds were addressed in Examiner Driscoll's Decision, and the applicant proposes no auditorium or gymnasium.
15. Section 20.57.070(10) TCC sets forth additional standards for daycare centers and nursery schools. Subsection (a) requires an access that accommodates pedestrians and vehicular traffic to and from the use. Furthermore, an applicant must provide an estimate of the maximum, expected trips generated by the use, and distribution of such trips by mode and time of day. The applicant submitted a Trip Generation Analysis prepared by Heath & Associates, a qualified traffic engineering firm. Heath & Associates found that no additional impacts will exceed Thurston County road standards, and that no impacts will occur from traffic generated within the facility parking lot. Subsection (b) requires screening of the facility from adjacent residential districts, and such was addressed in the previous Decision approving the special use permit.

## CONCLUSIONS:

1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request.
2. The applicant has shown that the request for an amendment to a previously approved special use permit satisfies all criteria set forth in TCC 20.54.040 (addressing special use permits) and all sections of TCC 20.54.070(1) and (10) (addressing private schools and daycare facilities). Therefore, the requested amendment should be approved subject to the following conditions:
  1. Prior to, or in conjunction with, the issuance of any building permit, all regulations and requirements of the Thurston County Environmental Health Department, Thurston County Roads and Transportation Department, Thurston County Fire Marshal, Thurston County Resource Stewardship and the Hearing Examiner Decision shall be met.
  2. Prior to final occupancy, an on-site sewage system record drawing must be submitted for review and acceptance by Environmental Health.
  3. A School Facility Plan Review Application must be submitted to the Food and Environmental Services Section prior to any K-12 educational school occupying the building. An application may be obtained by contacting the Food & Environmental Services Section at 360-867-2667 or at <http://www.co.thurston.wa.us/health/ehle/schools>.
  4. If the applicant proposes any change in use or expansion in the number of individuals occupying the building, additional review will be required at that time with respect to the on-site sewage system, water system, and all other applicable health regulations.
  5. Lighting shall be designed and shall function in a manner that shields direct light from adjoining streets and properties.
  6. Prior to occupancy of the structure, all vegetation shall be installed in compliance with the previously approved landscape plan.
  7. The applicant shall maintain all landscape and planting areas in a healthy condition and replace any dead or dying vegetation.
  8. If, at time of final building occupancy, installation of vegetation has not occurred, the Applicant shall provide financial security equal to one hundred twenty-five percent (125%) of the cost to purchase and install the required plantings. The figure shall be based upon a contractor's estimate accepted

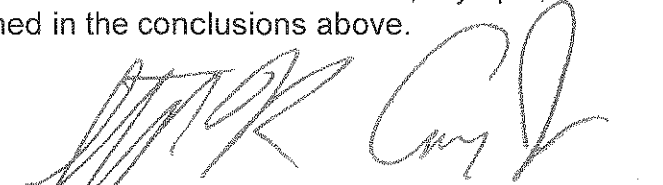
by the county and shall be provided to the county to secure the successful establishment of newly planted trees. Such financial security shall be effective for a three-year period following completion of the planting.

9. Approval of the Special Use Permit does not include organized daycare activities after operating hours or overflow parking in the western portion of the subject parcel.
10. Approval of the Special Use Permit does not include amplified music or voices for outdoor events or activities.
11. In the event that archaeological deposits or skeletal material or features of a burial/interment situation are encountered during construction activities, all work in the vicinity of the discovery area must stop immediately and contact made with the Washington State Historic Preservation Officer, Thurston County Resource Stewardship, The Squaxin Tribe, The Nisqually Tribe, the property owners and project point of contact.
12. 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 Land Use and Environmental Section will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
13. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the hearing examiner. Any substantial change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to the approval of the hearing examiner and may require further and additional hearings.
14. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition precedent to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

**DECISION:**

The request for an amendment to a previously approved special use permit to allow conversion of an existing 2,998 square foot structure designated for professional office use to a school and daycare facility at a site located at 3325-33<sup>rd</sup> Lane N.E., Olympia, is hereby granted subject to the conditions contained in the conclusions above.

ORDERED this 19th day of June, 2017.



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STEPHEN K. CAUSSEAU, JR.  
Hearing Examiner

TRANSMITTED this \_\_\_\_ day of June, 2017, to the following:

**APPLICANT/OWNER:** Greg and Dana Mueller  
3118-33<sup>rd</sup> Lane N.E.  
Olympia, WA 98506

**OTHERS:**

THURSTON COUNTY



**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 **\$669.00** for a Request for Reconsideration or **\$890.00** 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.



<b>Project No.</b> _____ <b>Appeal Sequence No.:</b> _____
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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  \$669.00 for Reconsideration or \$890.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
 Filed with the Resource Stewardship Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.