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**CITY OF LYNNWOOD
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**BEFORE the HEARING EXAMINER for the
CITY of LYNNWOOD**

DECISION

FILE NUMBER: CUP-002063-2014

APPLICANT: Edmonds School District No. 15
20420 68th Avenue W
Lynnwood, WA 98036

TYPE OF CASE: Conditional Use Permit for a District Maintenance and Transportation Facility

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: November 12, 2014

INTRODUCTION ¹

Edmonds School District No. 15 (District) seeks a Conditional Use Permit (CUP) to construct a District Maintenance and Transportation Facility (also called a "Support Services Center").

The District filed the CUP application on September 5, 2014. (Exhibits 1.2 and 1.3 ²) The Lynnwood Community Development Department (CDD) deemed the application to be complete when filed. (Exhibit 1.1)

The subject property is located at 20525 52nd Avenue W.

The Lynnwood Hearing Examiner (Examiner) viewed the subject property on November 6, 2014.

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

² Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Decision is based upon all documents in the record.

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The Examiner held an open record hearing on November 6, 2014. CDD gave notice of the hearing as required by the Lynnwood Municipal Code (LMC). (Exhibits 1.9 and 1.10)

The following exhibits were entered into the hearing record during the hearing:

- Exhibit 1.1: Departmental Staff Report
- Exhibit 1.2: Land Use Application, Conditional Use Permit Checklist, and Application
- Exhibit 1.3: Project Narrative, Project Statistics, Request for Height Variance, Request for Landscaping Variance, Request for Transitional Landscaping and Fence Variances
- Exhibit 1.4: Request for Landscape and Building Height Departures
- Exhibit 1.5a: CUP Addendum, October 29, 2014
- Exhibit 1.5b: Enclosed Canopy Covered List
- Exhibit 1.5c: Wetland Delineation Update
- Exhibit 1.6: Noise Study
- Exhibit 1.7: Mitigated Determination of Non-Significance
- Exhibit 1.8: Summary and Referrals
- Exhibit 1.9: Notice of Public Hearing
- Exhibit 1.10: Affidavit of Publishing Notice of Public Hearing
- Exhibit 1.11: Drainage Plans C1 and C2
- Exhibit 1.12: Landscape Plans L1.0, L2.0, L3.0, L4.0
- Exhibit 1.13: Elevations A-201, A-202, A-203
- Exhibit 1.14: Site Plan A-002
- Exhibit 1.15: Vicinity Map
- Exhibit 1.16: Zoning Map
- Exhibit 1.17: Comprehensive Plan Map
- Exhibit 1.18: Public comment letter
- Exhibit 2: Hearing Examiner Decision, 2006CUP0002, July 9, 2007
- Exhibit 3: Approved 2007 site plans:
 - Exhibit 3a: Exhibit 1.9 (Page 37 only) from file 2006CUP0002
 - Exhibit 3b: Exhibit 1.15 from file 2006CUP0002
- Exhibit 4: Oblique aerial photograph of site, c. 2008
- Exhibit 5: Revised Landscape Plan
- Exhibit 6: Addendum to Mitigated Determination of Non-Significance
- Exhibit 7: Wetland Report
- Exhibit 8: Updated Exhibit 1.3

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. In September, 2006, the District filed an application (the 2006 Application) for a CUP to consolidate four existing District facilities into a "District Support Center" on the subject 19.8 acre site: District administrative offices; maintenance and bus facilities; and a warehouse. The application was assigned file number 2006CUP0002. The undersigned held a hearing on that application in June, 2007, and granted the requested CUP, subject to conditions, on July 9, 2007 (the 2007 CUP). Condition 1 designated Exhibits 1.9 (Page 37) and 1.15 from file 2006CUP0002 as the approved CUP development plans. (Exhibit 2) Exhibit 2 herein is a copy of the July 9, 2007, Decision; Exhibits 3a and 3b herein are copies of the plans approved by that Decision.
2. In or around 2008, the District obtained permits from the City to demolish the Scriber Lake Alternative High School (which at the time was located on the subject property) and to perform some preliminary site preparation work. The School was subsequently removed, some preliminary foundation work for the proposed maintenance building was undertaken, and some limited site grading and paving occurred. (Exhibit 4 and testimony) The site otherwise remains as it was in 2007. (Exhibit 4 and testimony)
3. Pursuant to LMC 21.24.300, CUPs expire two years after issuance unless construction of the project has been started, or unless a time extension has been requested of and approved by CDD. The District did not seek an extension of the 2007 CUP. (Testimony) The 2007 CUP thus expired years ago.
4. The District now seeks a replacement CUP (the 2014 Application) to construct a "Support Services Center" on the subject property. (Exhibits 1.2, 1.4, 1.5a, 1.5b, 1.11, 1.13, 1.14, 5, and 8) The current request involves exactly the same property as was the subject of the 2007 CUP. (Cf. Exhibits 3b and 1.14) The current proposal is a reduced version of the plan approved in 2007. (Exhibits 1.11, 1.14, 2, 3a, 3b, 5, and 8)

Item	2007 CUP	2014 Application
Facilities to be on-site	Administrative offices Maintenance facility Bus facility Warehouse	Maintenance facility Bus facility
Main building coverage	96,200 square feet (SF)	40,000 SF
Fuel/vehicle wash island	6,700 SF	6,700 SF
Outdoor storage area	2,000 SF	2,000 SF
Bus parking	152 spaces	120 spaces
Fleet vehicle parking	116 spaces	50 spaces
Employee/visitor parking	488 spaces	275 spaces

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Building height (exclusive of HVAC equipment)	35 feet	c. 30 feet
HVAC equipment height	c. 12 feet	c. 12 feet
Building setback from west property line (52 nd Avenue W)	335 feet	645 feet
Building setback from south property line (Interurban Trail)	128 feet	128 feet
Building setback from north property line (204 th Street SW)	187 feet	245 feet
Bus access point	204 th Street SW	204 th Street SW
Other vehicles access point	206 th Street SW driveway	206 th Street SW driveway
Pedestrian access to 52 nd Avenue W	None	ADA-compliant walkway
Pedestrian access to 204 th Street SW	Non-ADA-compliant stairway	None

5. The Support Services Center site is located on the east side of 52nd Avenue W between 204th and 206th Streets SW. (Exhibits 1.14 and 1.15) The western, nearly square, approximate 10 acres was the site of Scriber Lake Alternative High School (which, except for a covered play shed, has now been demolished). The eastern, triangular shaped, approximate 9.8 acres (the former Raskin property) was graded by the former owner, has had additional grading and paving done by the District, and is presently undeveloped. (Exhibits 2 and 4 and testimony)
6. Prior to the 2006 Application, the City Council: Amended the Comprehensive Plan such that the entire site was designated Industrial; amended the zoning such that the entire site was zoned Light Industrial (LI); and vacated all public rights-of-way which used to exist within the site. (Exhibit 2)

Neither the Comprehensive Plan designation, nor the Comprehensive Plan text, nor the site's zoning, nor the substantive requirements of the site's zoning have changed since the 2006 Application was filed. (Exhibits 1.1, 1.16, and 1.17 and testimony)

The LI zone allows many uses outright, among which are automotive repair, metal fabricating shops, offices, cabinet shops, freight terminals, manufacturing, lumber yards, warehouses and wholesale businesses. "Mass transit storage and maintenance facilities" are a conditional use in the LI zone. [LMC 21.50.100, Table 21.50.01] The required building setback from 52nd Avenue W is 70 or 100 feet, depending upon the type of activity involved. [LMC 21.50.200, Table 21.50.02]

7. Characteristics of the site and surrounding area have not changed appreciably since the 2006 Application was filed. (Testimony) The Support Services Center site is located in the southern portion of the City, near I-5. The site is adjacent to land zoned for single-family residential development to the west (across 52nd Avenue W) and commercial/industrial/office uses to the north, east, and south. The Interurban Trail abuts the southeast boundary and is zoned Public; a large

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wetland, zoned partly Business/Technical Park and partly Public, lies northeast of the site. The Lynnwood Park and Ride lot lies to the northeast of that wetland area. The site contains a small, depressional Category III wetland near the center of the north property line which has grown slightly towards the northeast since 2007. For the most part, site elevations range between 320 and 330 feet but go up to 370 feet along a portion of the southeast boundary. The steepest slope is at the western boundary by the wetland (64%) with an elevation change of 18 feet over thirty feet. (Exhibits 1.5c, 1.11, 1.16, 4, and 7)

8. Sound Transit is currently planning its light rail alignment into the Lynnwood Transit Center (the current Park and Ride lot). The current plan would have the tracks cross the eastern end of the site on a structure elevated about 35 feet above grade (above the bus parking area). Approximately three to four track support pillars are expected to be located within the site. The District has been involved with Sound Transit in planning the route's crossing of the site. (Testimony)
9. The proposed site plan is nearly identical with that approved for the 2007 CUP except that the main building is smaller and, thus, has greater setbacks from both 52nd Avenue W and 204th Street SW. (Cf. Exhibit 3 with Exhibits 1.14 and 5) The Maintenance and Transportation building, the fuel/wash island, the outside storage bins, the bus parking spaces, and the vehicle parking spaces are located in the same places as approved in 2007. (The vehicle parking will not occupy as much space as approved in 2007.) The Maintenance and Transportation building will be located centrally on the site with automotive parking and landscaping to its west, landscaping, staff parking, and bus fueling/washing to its north, bus parking to its east, and open storage to its south. The building's setbacks exceed 600 feet from the west and 200 feet from the north property lines. Automotive access will be primarily at 206th Street SW – the former Scriber Lake Alternative High School's access location; bus access will use 204th Street SW to enter the site near the mid-point of its north boundary. Maximum height of the two-story building will be approximately 30 feet with the exception of the roof-top mechanical enclosures. Parking will be provided for 120 buses, 50 maintenance and fleet vehicles, and 275 staff/employees/visitors. Mitigation for minor impacts to the on-site wetland buffer is proposed. Site grading will involve nearly balanced cut-and-fill: Approximately 36,165 cubic yards will be cut and approximately 34,096 cubic yards will be fill. (Exhibits 1.1, 1.13, 1.14, 5, and 8 and testimony)
10. The District requests relaxation under LMC 21.24.100 of the same requirements from which it sought and obtained relaxation in 2007. (Exhibit 1.4)
 - A. Building Height Relaxation. The site is subject to the "transitional area" requirements of the LI zone. The maximum permissible building height within such an area is 35 feet "unless other standards are approved in connection with a ... conditional use permit". [Chapter 21.50 LMC, Table 21.50.02 and Footnote "*"] Building height is measured "from the grade to the highest point of the coping of a flat roof ...". [LMC 21.02.145] The proposed building has a nearly flat roof; the building itself will be about 30 feet high. However, roof-top mounted HVAC (mechanical) equipment will be concealed behind two "penthouses" which will be

approximately 12 feet tall. (Exhibit 1.13) Roof-top mechanical equipment is normally not included in building height calculations. However, CDD determined that the “penthouses” must be included. (Exhibit 2) Thus, the District seeks relaxation of building height to allow the penthouses to be used to enclose the roof-top mechanical equipment.

- B. Landscape Relaxation 1: Southeast boundary. Section 21.50.220(C)(1)(b) LMC requires a 10 foot wide site-screening evergreen hedge and a “permanent six-foot site-screening fence shall be placed at the property line” where the property line abuts land zoned Public. The southeast boundary abuts land zoned Public – the Interurban Trail. (Exhibit 1.16) The existing hill between the site and the Trail is over ten feet high and provides a buffer better than any vegetation. Several evergreen and deciduous trees on the shelf above would be retained and contribute to the buffer. The District is requesting a waiver to not increase the landscaping in this area, but to follow the code provisions along the Trail where there is no hill or berm. The District is also asking to install a green or black cyclone fence on the property line rather than a solid fence. (Exhibits 1.4, 1.12, and 5)
 - C. Landscape Relaxation 2: North boundary. Section 21.50.220(C)(1)(b) LMC requires a 10 foot wide site-screening evergreen hedge and a “permanent six-foot site-screening fence shall be placed at the property line” where the property line abuts land zoned Public. Approximately the east third of the north property boundary abuts land zoned Public – the wetland adjacent to the Park and Ride lot. (Exhibit 1.16) A landscape strip is proposed along that property line, but not as dense as required by code. The District proposes a “six foot height or greater, green or black vinyl, chain link fence will be located on the property line.” (Exhibits 1.4, 1.12, and 5)
 - D. Landscape relaxation 3: Interior parking. Section 21.50.210(D)(2)(c) LMC requires 10% of a parking lot to be landscaped between buildings and property lines and 15% to be landscaped between buildings and streets. The District requests that this requirement not apply to the maintenance vehicle parking area or bus parking area at the east end of the site: Compliance would reduce the amount of parking available on site as well as the functional flexibility of the facility. Compliance in the passenger vehicle area is proposed. (Exhibits 1.4, 1.12, and 5)
11. On April 5, 2007, the District’s State Environmental Policy Act (SEPA) Responsible Official issued a Mitigated Determination of Nonsignificance (MDNS) for the 2006 Application.³ (Exhibit 1.7) The District received no comments on the MDNS; the District has no administrative SEPA appeal process. (Exhibit 2) The mitigation measures within the MDNS have been carried forward by CDD by reference as a recommended condition of approval. (Exhibit 1.1, Recommended Condition 6)

On November 4, 2014, the District issued an Addendum to the 2007 MDNS. The Addendum notes that the 2006 Application

³ State rule requires that the SEPA responsible official for a publicly-initiated project is to be the agency proposing the project. [WAC 197-11-926(1)] Thus, the District rather than the City is the responsible official for this project.

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represents a higher level of impact than the current proposal. The District is no longer constructing frontage improvements on the south side of 204th Street SW, including a sidewalk. Condition Transportation 1 has been removed. As a result of not constructing the frontage improvements, there are no longer wetland impacts, therefore no wetland mitigation is proposed in Condition Water 1. However, there are buffer impacts due to the access to the site from 204th Street SW. Buffer averaging is proposed as described in revised Condition Water 1

(Exhibit 6)

12. No testimony was entered into the record by the general public in support of or in opposition to the application.

The record contains one comment statement, submitted to CDD as an E-mail attachment. The statement is unattributed. (Exhibit 1.18) The E-mail was received from "Lindaatsea," an E-mail address which CDD believes, based upon prior E-mails in other matters, belongs to a Linda Willenbrink. (Testimony)

Exhibit 1.18 contains pictures of the District's present bus and maintenance facilities. The statement asserts that wetlands, a creek, a City park, and "the Interurban Trail will be severely and irreparably impacted." It further asserts that the "entire area is a flood plain". The author asserts, apparently with disapproval, that "[t]his will become an industrial area" and fears that "very little effort will be made to protect the land and its resources." (Exhibit 1.18)

The record contains no evidence that the "entire area is a flood plain" nor that any portion of the site is a designated flood plain.

13. CDD recommends approval of the requested CUP subject to conditions. CDD supports the requested relaxations, but wants the fence along the Interurban Trail to be inside the required perimeter landscaping rather than on the property line for aesthetic reasons. CDD would prefer that the northeast landscape area include a dense evergreen hedge, but is less concerned with that area than with the Interurban Trail frontage. Although not included in its recommended conditions, CDD supports the building height relaxation for the HVAC equipment. (Exhibit 1.1 and testimony)

The District asks that Recommended Condition 6 include wording that would acknowledge the changes in the MDNS brought about by issuance of the Addendum. (Testimony)

14. The currently recommended conditions include all 2007 CUP conditions except Condition 7 (which restricted access to 48th Avenue W to emergency use only). (Cf. Exhibit 2 with Exhibit 1.1) CDD testified that it did not include Condition 7 because Public Works did not mention it in its current

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referral comments. The District asked that it be allowed to access the site via 48th Avenue W for emergency purposes. (Testimony)

15. Community Transit (CT): Objects to the absence of any traffic mitigation at the 52nd Avenue W/200th Street SW intersection; “supports the MDNS transportation mitigation to install a traffic signal at 52nd Ave W and 208th St SW”; ⁴ asks for consideration of a stop sign or roundabout at the 52nd Avenue W/204th Street SW intersection; and asks for “better pedestrian connectivity between the proposed school district building and 52nd Ave W., and a connection between the facility and the Interurban Trail”. (Exhibit 1.8)

The Public Works referral comments state that “traffic analysis shows that a new traffic signal offered in the MDNS is not warranted” and that the City “support[s]” a roundabout at the 52nd Avenue W/204th Street SW intersection. (Exhibit 1.18)

The hearing record contains no traffic impact analysis evidence.

16. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ⁵

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

A CUP is a Process I application which is subject to an open record hearing before the Examiner. The Examiner makes a final decision on the application which is subject to the right of reconsideration and appeal to Superior Court. [LMC 1.35.100, .168, and .175 and 21.24.050]

Review Criteria

The review criteria for CUPs are set forth at LMC 21.24.100 and .150:

... In considering any conditional use permit, the hearing examiner shall prescribe any conditions that he/she deems to be necessary to or desirable for the public interest, and where appropriate may stipulate that the permit is temporary and establish an expiration date. However, no conditional use permit shall be granted unless it is found:

A. That the use for which such a permit is sought will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and

⁴ CT has mis-read the MDNS: The mitigation measure is to “provide pro-rata share contribution towards this signal improvement.” (Exhibit 1.7)

⁵ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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B. Will be in harmony with the general purpose of [the zoning code].

The hearing examiner may allow relaxation of the development standards of this title if he/she finds that alternative amenities, improvements, proposed location of uses or structures, or other features incorporated into the proposal are in harmony with the general purpose of this title and would provide equal or better protection to the public interest than would the standards proposed to be relaxed.

[LMC 21.24.100]

In determining findings, the hearing examiner shall take into account the character and use of adjoining buildings and those in the vicinity, the number of persons residing or working in such buildings or upon such land, traffic conditions in the vicinity, compliance with any special conditional use criteria for that specific use set forth in [Chapter 21.24 LMC] and all factors relevant to the public interest.

[LMC 21.24.150]

A “consistency determination” is also required for every project application. A consistency determination follows four steps set forth at LMC 1.35.070. Consistency criteria are:

1. Type of land use permitted at the site, including uses that may be allowed under certain circumstances if decision criteria are met;
2. Density of residential development (if applicable); and,
3. Availability and adequacy of public facilities (for those facilities identified in the comprehensive plan, if the plan or the city’s development regulations provide for funding of these facilities).

[LMC 1.35.070(A)]

Vested Rights

The City has no vesting regulations for land development applications. “Vesting” serves to “fix” the regulations against which a development application is judged. [*Potala Village Kirkland, LLC v. City of Kirkland*, ___ Wn. App. ___ (Div. I, 2014)]

In the 1950s, the [state] supreme court first adopted the common law vested rights doctrine [for building permit applications]. ... In cases that followed, Washington courts applied the vested rights doctrine to permit applications other than building permit applications. They included conditional use permit applications, grading permit applications, shoreline substantial development permit applications, and septic permit applications.

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In 1987, the legislature enacted legislation regarding the vested rights doctrine. The session laws added ... RCW 19.27.095(1) and RCW 58.17.033(1) respectively ... [which] only refer to building permit applications and subdivision applications. ...

Most recently, in *Town of Woodway v. Snohomish County*, the [state] supreme court reiterated that "[w]hile it originated at common law, the vested rights doctrine is now statutory."

[*Potala*, Slip Opinion 6 – 8 and 11] "With these points in mind, [the *Potala* court held] that the filing of [an] application for [a] shoreline substantial development permit, without filing an application for a building permit, [does] not vest rights to zoning or other land use control ordinances." [*Potala*, Slip Opinion at 12] The *Potala* court "express[ed] no opinion on whether or to what extent the vested rights doctrine applies to permits other than shoreline substantial development permits. These questions [were] not before [it]." [*Potala*, Slip Opinion at 25] Therefore, whether the vested rights doctrine still applies to CUPs is debatable.

Vesting is not particularly important in this case as the City has made no development regulations changes between the time the application was filed and this date. (Testimony)

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [LMC 1.35.155]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. As a general premise, if a proposal which has been approved returns for a subsequent hearing because the original approval has expired, the new decision should be the same as the original decision if the site, the proposal, the surroundings, and the regulatory framework have not changed appreciably. That premise will be followed in the evaluation of the present application.
2. A CUP is required for the Support Services Center solely because CDD determined that the bus parking and maintenance aspects of the proposal qualify as a mass transit storage and maintenance facility.⁶ The office and maintenance portions of the Support Services Center are permitted outright in the LI zone. Therefore, technically, evaluation of conformance could be limited solely to the bus

⁶ The District did not challenge that determination either in 2007 or in 2014. Therefore, the Examiner did not in 2007 and will not now consider whether a school district bus maintenance facility is a "mass transit" facility.

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parking and maintenance portions of the facility. However, since the entire proposal meets CUP criteria, the Examiner will not parse the evaluation in that manner.

3. Before the CUP criteria can be evaluated, the four “relaxations” must first be found to meet code requirements for approval.⁷

- A. Relaxation of building height for the mechanical equipment penthouses is warranted. A building height relaxation may be granted when “proof of conformance with the general intent of [Chapter 21.50 LMC] has been established.”⁸ [LMC 21.50.210(A)(2)] The mechanical structures’ design meets the performance standards of LMC 21.50.210(A)(2) with no increase in lighting, fire and safety hazards, electrical interference, odors, smoke or particulate matter, liquid and solid wastes, or open storage. The one impact to adjacent properties could be from noise; the penthouses will be designed to muffle the sounds so as to comply with the Lynnwood city code. Aesthetically, impact from the increased height will be limited with the building being over 600 feet from the residences on 52nd Avenue W (three times what it was in 2007) and over 180 feet from the north and south property lines. Those setbacks greatly exceed the minimum requirements of the LI zone. In addition, the mature trees along 52nd Avenue W will buffer the increased height from the residences along that street. Therefore, with the large setbacks, landscape buffering, and compliance with the performance standards, the twelve foot increase in height over 35 feet will remain in conformance with the general intent of the chapter as established in LMC 21.50.050.⁹
- B. Relaxation of the landscape requirement along a portion of the Interurban Trail is warranted. The vegetated hill will provide a better visual screen than would the code-required landscaping. Requiring the code-required screening where the hill exists would be redundant and wasteful.

Code specifies that the required screening fence is to be located on the property line: The “shall be placed” language of LMC 21.50.220(C)(1)(b) is mandatory. An applicant may seek relaxation of the code requirement under certain circumstances. The code does not say that the City may require something more than required by code. The District has not sought relaxation of the property line fence location. Therefore, the City is without authority to require the District to place the fence elsewhere. If the Council wants site-obscuring fencing

⁷ Conclusions of Law 3.A, 3.B, and 3.C, below, are substantively the same as the corollary conclusions in the 2007 CUP Decision: The facts are the same, the law is the same, the conclusions are substantively the same.

⁸ Section 21.50.210(A)(2) LMC states that a “height variance may be obtained” if stated requirements are met. It is clear from the context that the word “variance” does not mean a variance under Chapter 21.26 LMC: The criteria stated in LMC 21.50.210(A)(2) are vastly different from those in LMC 21.26.350.

⁹ The currently proposed building elevations indicate that the top of the HVAC screening structures will be approximately 10 feet above the top of the roof or approximately 40 feet above grade. (Exhibit 1.13) Given a 35 foot height limit in the LI zone, only a five foot relaxation would be required. That notwithstanding, the Examiner will grant the relaxation as requested to provide some flexibility as the detailed design process proceeds.

to be located inside the code-required landscaping, it will have to amend the code to so provide.

The District has sought relaxation of the “site-screening” aspect of the perimeter fence. The District proposes a “chain link” fence, but does not propose that it be “site-screening” (which would essentially require that it be slatted). That relaxation makes sense in this CUP for two reasons. First, if the perimeter fence were solid (“site-screening”), then no one using the Interurban Trail would ever see the 10 feet of landscaping behind the fence. The only people who would ever see the landscaping would be the District employees who work at the facility. Second, the nature of what is to be screened is not inherently objectionable: a well-designed building over 100 feet back from the property line and busses parked in rows.

- C. Relaxation of the landscape requirement along a portion of the north property line is warranted. Relaxation of the density and type of plantings is acceptable since the aesthetic impact to adjacent users or the public is mitigated by the presence of a large permanent, wooded, wetland buffer on the adjoining property. No one will be standing in the wetland looking into the Support Services Center.

For most of the same reasons set forth above, relaxation of the “site-screening” aspect of the perimeter fence adjacent to the off-site wetlands is also warranted.

- D. Relaxation of the landscape requirement within the bus parking area is warranted. The parking area for the buses and service vehicles could be considered a “storage yard” or a “service yard,” and not a parking lot. Were that position taken, no internal landscaping would be required. In any case, it will be shielded by the landscaped wetland area to the north, the building to the west, and the hill, berm, and code-required landscaping to the south.

- 4. Permitting the Support Services Center to locate on the subject property will not turn the area into an industrial area as the author of Exhibit 1.18 asserts: The area is already zoned LI – it is an industrial area as a result of the City’s legislative intent.¹⁰ The Support Services Center will be less intrusive into the residential neighborhood across 52nd Avenue W than might be many other uses permitted as a matter of right in the LI zone. Further, the design places the bus storage and maintenance area as far from the residences across 52nd Avenue W as possible; the building placement, terrain, and landscaping will largely block view of those areas from the residences. The setbacks far exceed those required within the LI zone.
- 5. The general purpose of the zoning code is set forth at LMC 21.04.015. Basically, the concept is to protect the natural environment and the welfare of the public while implementing the adopted Comprehensive Plan. The proposed Support Services Center has been designed to accomplish all those objectives. The larger-than-required setbacks, greater-than-required buffer along 52nd Avenue

¹⁰ Legislative decisions made by the City cannot be challenged or reconsidered in the context of review of a project development permit. [RCW 36.70B.030]

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W, and overall design combine to protect the public welfare to an extent greater than might occur if some other LI-permitted use were to be established on the site.

While not an explicit criterion, consolidation of these District functions on one site should also serve to increase efficiency and reduce (or at least minimize increase in) costs to the District and its taxpayers.

6. The impacts of the current proposal will be less than those that would have occurred under the 2007 CUP: The building is smaller, the number of employees on site will be less, the amount of traffic generated by the facility will be less. All impacts associated with those factors will likewise be less.
7. The proposal passes the consistency test: The combination of uses is either permitted outright or with a conditional use permit; density is not relevant as this is not a residential use; and sufficient public utilities are available to serve the proposed Support Services Center.
8. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following exceptions:
 - A. The exhibit references in Recommended Condition 1 are incorrect and incomplete because of revised plans submitted during the hearing. Portions of Exhibit 1.12 have been superseded by Exhibit 5. Appropriate revisions will be made.
 - B. Recommended Condition 2 will be restructured to follow the pattern of 2007 CUP Condition 2. The Examiner will not require an evergreen hedge on the northeast property line adjacent to the off-site wetland: No one will be on the other side of the property line looking into the site.
 - C. Recommended Condition 6 will be amended to include reference to the MDNS Addendum.
 - D. 2007 CUP Condition 7 will be added: Use of 48th Avenue W should be for emergency purposes only as it crosses the Interurban Trail.
9. No traffic impact mitigation will be imposed beyond that within the MDNS. The MDNS was not appealed back in 2007; the mitigation measures within it are binding except as amended through the 2014 Addendum. The Examiner has no authority to change any of those mitigation measures. The record contains absolutely no evidence to support any other traffic impact mitigation. Conditions cannot be imposed on a land use permit without evidence in the record to support them.¹¹ A review comment which simply asserts without supporting documentation that signals or roundabouts are needed does not constitute evidence to support imposition of a condition requiring such measures.

¹¹ Conditions may be imposed to mitigate impacts caused by or exacerbated by a proposed development, but only to the extent roughly proportional to the impact caused or exacerbated by the development.

HEARING EXAMINER DECISION

RE: CUP-002063-2014 (Edmonds School District No. 15 Maintenance and Transportation Facility)

November 12, 2014

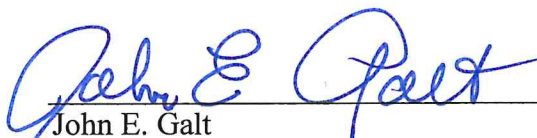
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10. The current plan provides a direct, ADA-compliant pedestrian link to 52nd Avenue W. Direct access to the Interurban Trail is neither required nor desirable. Access to the site from the Trail is available where the Trail crosses 52nd Avenue W: A short walk north on 52nd Avenue W from the Trail crossing leads to the main entrance to the site. Any direct access along the site's frontage on the Trail would be undesirable as it would lead to the rear, storage area portion of the site. No public benefit is served by creating a location where any pedestrian on the Trail could walk into the bus storage portion of the site.
11. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner **GRANTS** the requested Conditional Use Permit for for a District Maintenance and Transportation Facility **SUBJECT TO THE ATTACHED CONDITIONS**.

Decision issued November 12, 2014.


John E. Galt
Hearing Examiner

HEARING PARTICIPANTS¹²

Stewart Mhyre
Gloria Rivera

Jim Petrich
Paul Krauss

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Community Development Department a written request for reconsideration within seven calendar days following the issuance of this Decision in accordance with the procedures of LMC 1.35.168. Any request shall specify the error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the hearing conducted by the Examiner which forms the basis of the request. See LMC 1.35.168 for additional information and requirements regarding reconsideration.

¹² The official Parties of Record register is maintained by the City's Hearing Clerk.

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NOTICE of RIGHT of APPEAL

This Decision is final subject to the right of a party of record (See LMC 1.35.148.) with standing, as provided in RCW 36.70C.060, to file a land use petition in Superior Court in accordance with the procedures of LMC 1.35.175 and the Land Use Petition Act [Chapter 36.70C RCW]. See LMC 1.35.175 for additional information and requirements regarding judicial appeals.

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation."

CONDITIONS OF APPROVAL

CUP-002063-2014

Edmonds School District No. 15

Maintenance and Transportation Facility

This Conditional Use Permit is subject to compliance with all applicable provisions, requirements, and standards of the Lynnwood Municipal Code, standards adopted pursuant thereto, and the following special conditions:

1. Exhibits 1.11, 1.12 (as amended by Exhibit 5), 1.13, and 1.14 shall constitute the approved Conditional Use Permit development plans subject to any requirements imposed during Design Review. Revision of approved plans is governed by LMC 1.35.180.
2. Relaxation of the following code requirements pursuant to LMC 31.24.100 is approved: Chapter 21.50 LMC, Table 21.50.02, to allow roof-top mechanical penthouses up to 12 feet in height; Section 21.50.220(C)(1)(b) LMC to eliminate perimeter landscaping on the western portion of the southern property line (with code-required landscaping from 300 feet west of 48th Avenue W to the east end of the site) with the code-required fence along the property line (site-obscuring fence not required); Section 21.50.220(C)(1)(b) LMC to allow perimeter landscaping on the northeastern property line to be of decreased density and different species (evergreen hedge not required) with the code-required fence along the property line (site-obscuring fence not required); and Section 21.50.210(D)(2)c) to eliminate parking lot landscaping in the fleet vehicle and bus parking areas.
3. Development shall comply with all provisions of the Zoning Code pertaining to construction in the Light Industrial zone and the applicable performance standards and transitional standards except for the exceptions set forth in Condition 2, above.
4. Parking lot lighting adjacent to wetlands shall be shielded to prevent impacts to wildlife.

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5. Prior to issuance of a building permit, the project shall receive Project Design Review approval as required by LMC 21.50.105.
6. The permittee shall comply with all conditions of the Mitigated Determination of Nonsignificance (MDNS) issued for this proposal on April 5, 2007 (Exhibit 1.7), as amended by the Addendum issued on November 4, 2014 (Exhibit 6).
7. A Critical Areas Permit, subject to Public Works approval, is required for the project.
8. Only “emergency” access shall be allowed across the Interurban Trail at 48th Avenue W. Appropriate signage warning trail users of potential traffic at 48th Avenue W shall be located north and south of the intersection.
9. From one year of occupancy, the City reserves the right to inspect the perimeter landscaping to determine adequacy of site-screening.