

DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: January 26, 2010

PLAT/PROJECT NAME: *The Attic Learning Community*

APPLICANT/
LANDOWNER: The Attic Learning Community

FILE NO.: 09-102699LU

TYPE OF REQUEST: **Conditional Use Permit (CUP)**

DECISION (SUMMARY): **APPROVED WITH A PRECONDITION AND CONDITIONS**

BASIC INFORMATION

LOCATION: 24023 51st Avenue SE, Woodinville WA 98072

ACREAGE: 4.83 acres

COMPREHNSIVE PLAN DESIGNATION: Rural Residential – 5 (RR5-Basic)

ZONING: R-5

UTILITIES:

Water: Alderwood Water District

Sewer: On-site septic

SCHOOL DISTRICT: Northshore School District

FIRE DISTRICT: No. 7

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

The Applicant proposes to construct and operate a private school for grades K through 12 on the subject property. The project is defined as a "School, K-12, including public, private and parochial" under SCC 30.91S.050. The facility is a private school for children ages 5 to 18. The school currently is located in King County, near Woodinville. The school will consist of 100 students, five full-time teachers, and 14 part-time teachers. The proposal seeks approval for the construction and use of the following elements: (1) a 7,980 square-foot school building that is two and one-half stories tall, providing 14,000 square feet of usable space; (2) the conversion of an existing single-family residence on the site to a caretaker's residence of approximately 1,225 square feet; (3) a 300 square foot equipment storage shed; (4) a 800 square foot greenhouse; (5) a 400 square foot detached classroom building ("The Writer's Cottage"); (6) a 1,200 square foot covered basketball court; and (7) a 314 square foot covered bicycle storage building.

A complete application for a CUP was received on May 8, 2009. (Exhibit A1) As of the hearing date, 153 days of the 120-day review period will have elapsed. The 120-day time limit was not met on this project due to the recent reduction in staffing at the Department of Planning and Development Services (PDS), and the resultant increase in workload per remaining staff members.

PDS gave proper public notice of the open record hearing as required by the County Code. (Exhibits F1, F2 and F3)

A State Environmental Policy Act (SEPA) Determination of Nonsignificance (DNS) was issued on December 8, 2009; no appeals were filed. (Exhibits E1, E2, F1, F2 and F3)

The Examiner held an open record hearing on January 7, 2010. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on January 7, 2010 at 11:13 a.m. Approximately 50 citizens appeared at the hearing to express their support for the application. In addition, the Examiner received 40 letters in support of the application, and stating support for the Attic Learning Community as a good neighbor, community member supportive of seniors and the poor, and as an environmental steward of Little Bear Creek. (Exhibits J-2 through J42)

1. The Examiner indicated that she had read the PDS staff report, reviewed the file and was generally familiar with the subject property and the proposed project.
2. The parties and witnesses were sworn in *en masse*.

3. Tom Barnett appeared for PDS. Angela Larsh of Urban Concepts appeared on behalf of the Applicant.
4. Four citizens testified about the project. Their testimony is summarized below.

NOTE: For a complete record, an electronic recording of this hearing is available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

Based on all of the evidence in the record, the following findings of fact are entered:

1. The master list of Exhibits and Witnesses which is a part of this file and testimony of witnesses received at the public hearing, which were all considered by the Examiner, is hereby made a part of this file, as if set forth in full herein.
2. The PDS Staff Recommendation has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Policy Act (SEPA). That report is hereby adopted by this reference as if set forth in full herein. (Exhibit I)
3. At the public hearing, in excess of 50 people attended and several persons testified.
 - (a) Jack McDaniel of 4705 240th Street SE, Bothell WA testified that he has owned a neighboring property and operated the Academy of Canine

Behavior on the site for the past 41 years. He stated that he had no objection to the proposal, but wanted the school to know that on occasion, there are dogs that bark on his property.

- (b) John Lange of 1427 231st Street SE, Bothell WA testified about the positive impact that the school will bring to the area. He is a parent of a student that attends The Attic Learning Community at its present location. He noted their participation in a restoration project for Little Bear Creek, and their strong commitment to carpooling to reduce traffic. He noted that the studies show that the majority of the traffic will use existing arterials and that the school's hours miss the peak hours for traffic. Mr. Lange also noted that the design of the school will be consistent with the rural character of the area.

- (c) James Broussard of 24107 51st Avenue SE, Bothell WA also testified. He lives directly next door to the subject property to the south. His residence is located approximately 20 feet from the fence line of the school. He asked about a fence, traffic flow and noise levels.

- (d) Ms. Pat Orrell, Executive Director of the Attic Learning Community testified and responded to Mr. Broussard's concerns. She stated that they are committed to being a good neighbor to all in the vicinity of the school and have a history of doing whatever it takes to resolve any issues with neighbors. They will provide a fence using materials to the satisfaction of Mr. Broussard. As to noise, she noted that they have only 100 students and they do not take recess or breaks outdoors at the same time. They will work to keep noise levels down if the neighbors find that the students are being too loud. (Tom Barnett of PDS testified and noted that Chapter 10.01 of the County Code sets maximum noise level at at 57 dbl). Ms. Orrell also noted that their proposed landscaping and the fence will help and that their hours are limited to 8:30 a.m. to 4:30 p.m., which limits the traffic and noise levels.

In addition, two citizen comments were received for the project, one via e-mail (Exhibit H1), and one via telephone, asking questions about traffic related to the school project.

4. There is overwhelming public support for the approval of the CUP. The Hearing Examiner finds that The Attic Learning Community has committed to working with surrounding property owners to resolve any issues raised by the operation of the school at this location within the requirements of the Snohomish County Code.
5. The site slopes downward from west to east, relatively gently over the portions of the site proposed to be developed. A Category II wetland area and Rowland's Creek, a fish-bearing stream, exist along the eastern portion of the site. The site has existing second-growth evergreen trees covering the eastern half of the site. A single-family residence was constructed on the site in 1935; it is proposed to be converted to the caretaker's quarters for the school.
6. The property is outside of the Urban Growth Area (UGA). UGA boundaries exist approximately 2,000 feet to the east of the site's east property line, and a similar distance to the west from the west property line. The King-Snohomish County line is about 1,100 feet south of the south property line.
7. The zoning of the properties nearby that are outside of the UGA is R-5. Nearby properties within the UGA to the west are zoned R-7200 and R-9600, and those within a UGA to the east are zoned Light Industrial (LI) and Heavy Industrial (HI).
8. Existing uses in the area are primarily single-family residential, with larger, rural lots to the north and south. Smaller, "suburban style" lots exist to the northwest and east, outside of the UGA; these lots are a result of prior Rural Conservation (RC) zoning that was in place prior to the passage of the Growth Management Act (GMA). Kokanee Elementary School is nearby to the northeast.

B. Compliance with County Codes and Policies.

9. Parks and Recreation System.

The proposed activity is not subject to mitigation payments as contained in Chapter 30.66A SCC.

10. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC) PDS Traffic has reviewed the proposal for compliance with Title 13 and Chapter 30.66B of Snohomish County Code, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures. The subject property is within Transportation Service Area (TSA) E.

- A. Road System Impact Fee [SCC 30.66B.310] A development shall mitigate its impact upon the future capacity of the Snohomish County road system

by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development. A development's road system impact fee will be based on the latest edition of the ITE Trip Generation report published by the Institute of Transportation Engineers or a trip generation study submitted by the Applicant's traffic engineer.

The Applicant performed trip generation counts at their existing facility shortly after school started this year. The study dated October 14, 2009, indicates that 100 students will generate 155 ADT (Average Daily Trips), 23 AM Peak Hour Trips (PHT) and 9 PM PHTs. Since ADT is based on a population of 100 students there will be a recommended condition of approval that limits the number of students to 100. The impact fee for the subject development is \$31,806.00 (155 ADT x \$216.00/ADT x 0.95). This figure includes credit for on-site TDM measures.

- B. Concurrency [SCC 30.66B.120] The County makes a concurrency determination for each development application to ensure the development will not impact a County arterial unit in arrears or cause a County arterial to go in arrears. The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and has been deemed concurrent as of November 3, 2009. The concurrency determination approval will expire on November 3, 2015, six years from the date concurrency was given. Consistent with DPW Rule 4225.070, October 14, 2009, is the point in time for which the concurrency analysis is based (i.e. the concurrency vesting date). The subject development is located in TSA E which, as of the date of submittal of the application, had no arterial units in arrears. The subject development generates 23 a.m. peak-hour trips and 9 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips in which case the development would also have to be evaluated under SCC 30.66B.035. No such additional analysis is required.
- C. Right-of-way Classification; Access and Circulation [SCC Title 13, EDDS 3-02 and SCC 30.66B.420] There are no internal roads within the subject development. In accordance with the 2006 County Road Atlas, the frontage road, 51st Ave SE, is classified as a Non-Arterial Local Access road. The proposed development will take access from 51st Ave SE in two locations. Sight distance was evaluated at the proposed access points and was found to meet the minimum requirements of EDDS 3-08. The Hearing Examiner finds that the development has adequately provided for access, circulation, and sight distance.

- D. Frontage Improvements and Extent of improvements [30.66B.430] A paved shoulder will be constructed along the subject parcel's frontage to bring this section of 51st Ave SE up to current road standards. There are existing urban road improvements approximately 160 feet to the north on the west side of 51st Ave SE. Traffic from the subject development is not expected to have a detrimental effect on the Level of Service (LOS) on the County road system.

In determining the extent of improvements required, the County considers, among other relevant factors, the criteria set forth in SCC 30.66B.430(a) through (p). The Hearing Examiner has reviewed those factors as set forth in the Staff Recommendation (Exhibit I), which is adopted herein by this reference, and finds that the recommended extent of improvements are consistent with PDS's analysis of the factors required in SCC 30.66B.430, and the facts set forth in the entire record.

- E. Right-of-Way Requirements [SCC 30.66B.510, SCC 30.66B.520] A development shall be required to dedicate, establish or deed right-of-way to the County for road purposes as a condition of approval of the development, when to do so is reasonably necessary as a direct result of a proposed development, for improvement, use or maintenance of the road system serving the development.

As noted above, the road serving this development, 51st Avenue SE, is designated as a Non- Arterial and requires a right-of-way width of 30 feet on each side of the right-of-way centerline. Currently, no right-of-way exists on the development's side of 51st Avenue SE. Therefore, the development is required to deed an additional 30 feet of right-of-way. This is indicated on the pre-submittal form signed by the Applicant and their representative on March 4, 2009.

The Applicant has indicated that the deed for the property already "accepts" 20 feet of the property for the 51st Avenue right-of-way, and the County Assessor's records show this. However, the County's right-of-way records do not show that 20 feet of right-of-way was dedicated to it. The Applicant and the County are in agreement about the location of the property's western property line after the recommended deeding occurs. For this reason, PDS has included a recommended Condition E.3 regarding right of way dedication, which uses the phrase "to the satisfaction of the Department of Public Works". PDS believes the inclusion of this language will allow approval of the proposed CUP, and also leave room for additional inquiry into the historical records of the status of the right-of-way in this location. (See also, Exhibit I-1) The Examiner finds that the discrepancy between the Applicant and County's records is not fatal to approval of the CUP. In addition, the Applicant has agreed to provided the required right-of-way and the parties have agreed to perform additional research to determine what has been previously granted to the County and how much more still needs to be dedicated. The Examiner has included the proposed Condition E.3.

Finally, 51st Ave SE, on which the development's frontage improvements are required, is not in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credits towards right-of-way deeding are not applicable.

- F. Frontage Improvements and Bicycle Path [SCC 30.66B.410] All developments will be required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable. DPW Rule 4222.020(1) requires full rural frontage improvements along the subject parcel's frontage on 51st Ave SE. Specifically, the Applicant shall provide asphalt concrete pavement consisting of 10 feet in width from the roadway/right-of-way centerline, with a 7-foot paved shoulder.

As noted above, 51st Ave SE on which the development's frontage improvements are required, is not in the impact fee cost basis (Appendix D of the County's Transportation Needs Report), therefore, credits towards the Applicant's impact fee for any frontage improvements that can be used in the ultimate build-out of the road are not applicable. Construction of frontage improvements is required prior to any occupancy of the development.

The County's current adopted County Wide Bicycle Facility System Map became effective on February 1, 2006. The subject development does not border on a right-of-way that has been identified on the adopted Bicycle Facility System Map. A bicycle path is not required along the developments frontage on 51st Ave SE.

- G. Inadequate Road Condition (IRC) [SCC 30.66B.210] Regardless of the existing level of service, any development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing IRC at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC.

The subject development proposal will not impact any IRC locations identified within TSA E with three or more of its p.m. peak hour trips, nor will it create any. Therefore, no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

- H. Transportation Demand Management (TDM) [SCC 30.66B.630] TDM is a strategy for reducing vehicular travel demand, especially by single occupant vehicles during commuter peak hours. TDM offers a means of increasing the ability of transportation facilities and services to accommodate greater travel demand without making expensive capital

improvements. The County requires TDM of developments inside the UGA and developments that impact arterial units designated as ultimate capacity.

SCC 30.66B.630 requires development inside the UGA to provide TDM measures. Since this development is outside of the UGA, TDM measures are not required, but the Applicant is proposing to provide on-site TDM measures. An acceptable TDM plan was submitted. The Applicant has an adopted carpooling policy which is currently implemented at their existing school location, which has a proven track record of compliance by school families. This fact was supported by the testimony of The Attic's Executive Director, Pat Orell, and John Lange, a parent, at the public hearing. A 5% credit has been applied to the impact fee.

- I. Latecomers Agreements (SCC 13.95) There are no applicable late comers agreements associated with the subject development.

- J. State Highway Impacts [SCC 30.66B.710] When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement (ILA) between the County and the Washington State Department of Transportation (WSDOT). This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the County designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

This development is subject to SEPA and thus is subject to the ILA between Snohomish County and the WSDOT that became effective on December 21, 1997, and as amended through the date of completeness for this application. The Applicant's traffic study dated October 14, 2009 (Exhibit C1), indicates that trips from the subject development will not impact any State project with three or more directional PHTs. A comment from the State in the form of an e-mail dated November 2, 2009, indicates agreement with the traffic study. (Exhibit G2) Accordingly, mitigation for impacts to state highways is not required.

- K. Other Jurisdictions Streets and Roads [SCC 30.66B.720] Mitigation requirements for impacts on streets inside cities and roads in other counties are imposed in a manner consistent with the terms of a Reciprocal Traffic Mitigation ILA between the County and the other jurisdiction(s). This development is subject to SEPA and therefore is subject to the ILA between Snohomish County and the City of Bothell.

Mitigation for the City is based on the number of students served by The Attic Learning Community. The development falls within Zone CO-2 mitigation sub-area described in the ILA. Based on the Traffic Study's analysis, the Applicant proposes to pay the City of Bothell impact fees in the amount of \$5,842.50, equivalent to \$58.42 per student (which amount includes a credit of 5% for

implementing TDM measures). (Exhibit C1) The City sent comments on the proposed development to the County on June 19, 2009, indicating their agreement with the proposed amount of the fee. (Exhibit G1) The Examiner has included a condition requiring payment of impact fees to the City of Bothell in the amount of \$5,842.50.

11. Fire Code [Ch. 30.53A SCC] Compliance with the latest edition of the International Fire Code in effect on the date of completeness is required in the design and construction of the improvements for the development. No evidence was provided in the record regarding review of the project by the Fire Marshall or by Fire District No. 7. However, the absence of this material at the time of approval of the CUP is not fatal to the CUP application. Review and approval of the project by those fire agencies is required prior to the issuance of building permits and/or the issuance of any certificate of occupancy.

12. Drainage and Grading (Chapters 30.63A and 30.63B SCC).
 - A. Drainage. The project consists of one on-site basin that slopes to the east and into an on-site wetland that then flows south and off-site near the southeast corner of the property. The site is currently covered in grass to the west, large coniferous trees to the east, and includes an existing single-family residence with a gravel driveway. The proposed school will contain a parking area and several new school buildings. A Targeted Drainage Report (Exhibit C2) was submitted with the application. The report indicates that the site was analyzed as though it is fully forested. In the developed condition, less than 15% of the total site will consist of impervious surfaces. All storm water runoff will be infiltrated through infiltration trenches (and rain gardens maintained by the school and its students as part of their environmental curriculum). The Applicant has voluntarily agreed to a condition that no chemical fertilizers or pesticides will be used on the landscaping areas of the development. Two cartridge stormfilters will be used to treat stormwater runoff from parking lot areas. The Targeted Drainage Report concludes that the project will not increase the peak 100-year runoff over the existing condition by more than 0.1 cubic feet per second. Therefore, no flow control other than infiltration is required.

 - B. Grading. Proposed grading on the site is in excess of 100 cubic yards, which triggers the need for a grading permit and the preparation of a Storm Water Pollution Prevention Plan (SWPPP) according to Chapter 30.63B SCC and PDS Rule 3044. The Targeted Drainage Report includes a SWPPP. The school will be required to obtain a grading permit prior to construction. In addition, a full drainage plan must be submitted and approved pursuant to Chapter 30.63A SCC. The Examiner has included a condition requiring the submittal and approval of

a grading permit and full drainage plan prior to the issuance of any permits for the site.

13. Critical Areas (Chapter 30.62 SCC)

The Applicant is proposing a private school on a five acre parcel which includes a Type F stream, associated wetland, and steep slopes on the eastern half of the property. The Type F stream is presumed to be habitat for the Puget Sound Chinook Salmon, a species listed under the Endangered Species Act, due to the stream's proximity to Little Bear Creek. Where a development is adjacent to such a stream, a habitat management plan must be submitted according to Chapter 30.62 SCC, the Critical Areas Regulations.

The Applicant submitted a critical area study and habitat management plan prepared by Wetland Resources, Inc. dated April 29, 2009 (Exhibit C4). Development is proposed on the western side of the property outside of the wetland and stream buffers. No impacts to critical areas or buffers are being proposed and thus, no mitigation is required.

The on-site critical areas and buffers will be permanently protected as Critical Area Protection Areas (CAPA) and the CAPA boundaries will be recorded in a Critical Areas Site Plan (CASP). A small portion of the outermost buffer is existing maintained lawn and will be allowed to continue to be maintained. Several conditions regarding the CAPA and CASP are included as conditions of approval.

14. School Mitigation (Chapter 30.66C SCC)

The project is not subject to fees associated with Chapter 30.66C SCC.

15. Zoning (Chapter 30.2 SCC).

This project meets zoning code requirements for lot size, setbacks, required parking stalls, landscaping, bulk regulations and other zoning code requirements. See *Conditional Use Permit* section below for analysis of zoning code requirements.

16. GMA Comprehensive Plan (General Policy Plan, "GPP").

The subject property is designated Rural Residential (1 DU/ 5 Acres Basic) on the latest version of the GPP Future Land Use map, and is located outside of any Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Rural Residential (1 DU/ 5 Acres Basic) designation "...includes lands which were designated as Rural or Residential Estates on pre-GMA subarea comprehensive plans. The implementing zones within this designation are the Rural-5 Acre zone and other zones with a minimum lot size requirement larger than 5 acres." Here, the proposal is for the construction of a private school in an R-5 zone. PDS has reviewed the GMACP and found that the following policies from the GPP are at least partially applicable to the instant proposal.

- Land Use Policies: GOAL LU 6, LU Policies 6.A.2; Objective LU 6.B;

- Transportation Policies TR 1.C.2; TR Policies 3.B.1; TR Policies 7.B.5;
- Capital Facilities Policies: GOAL CF 10; CF Policies 10.A.1; and
- Natural Environment Policies: Objective NE 3.B:

The Examiner finds that the GPP does not provide clear policy guidance or direction related to the instant CUP application. However, CFP Goal 10 states that the County will ensure that growth and development authorized under the Comprehensive Plan can be accommodated by present and future school facilities. Providing additional private school facilities will further ensure that adequate school facilities are present to support future growth. Accordingly, the Examiner finds that the issuance of a CUP for this project is consistent with the GPP.

17. SEPA (Chapter 30.61 SCC)

A DNS was issued for the application on December 8, 2009 (Exhibit E2). No comments were received on the DNS, and no appeals were filed.

Conditional Use Permit Requirements. (Chapter 30.42 SCC)

The Applicant has provided an analysis of how they meet the decision criteria required for a CUP. (Exhibit A2) The hearing examiner may approve, approve with conditions, or deny a CUP only when all the following criteria are met: (a) The proposal is consistent with the comprehensive plan; (b) The proposal complies with applicable requirements of this Title 30 SCC; (c) The proposal will not be materially detrimental to uses or property in the immediate vicinity; and (d) The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property. The Examiner will review each decision criteria in turn.

18. Consistency with the Comprehensive Plan.

The proposal is consistent with the County's GMA Comprehensive Plan, as shown in Finding of Fact 16, above.

19. Compliance with the Requirements of Title 30 SCC.

A private school is an allowed use in the R-5 zone upon approval of a CUP. (SCC 30.21.010) This project meets zoning code requirements for bulk regulations, parking, landscaping, lot coverage, height and other zoning code requirements. As conditioned, the proposal meets all other applicable requirements of Title 30 SCC.

- A. Building height and setbacks: The maximum building height in the R-5 zone is 45 feet. The height of the largest building (the main school building) is 38'-6", and therefore is well within compliance. The detailed construction plans will be examined for compliance with the building height requirements prior to issuance of any building permits. The minimum building setback in the R-5 zone when the subject property adjoins a rural zone is 5 feet, and 20 feet from the edge of the right-of-way of 51th Avenue SE. All buildings are at least 20 feet from any property line.
- B. Parking: SCC 30.26.030(1) requires that private elementary and junior high schools provide one parking stall for each 12 seats in the auditorium or assembly room. The largest room in the main school building is approximately 2000 square feet, and no fixed seating is proposed. Applying the most restrictive building code occupancy ratio of 7 square feet per person equates to a requirement for 23 parking stalls. Thirty-three parking stalls are proposed, providing sufficient parking stalls to comply with the zoning code. In addition, sufficient off-street space for safe loading and unloading of students from school buses and cars is provided as required by SCC 30.26.030(1).
- C. Landscaping: SCC 30.25.022(2) requires that the Applicant provide parking area landscaping equal to at least 10% of all parking and driving surfaces. The landscape plan (Exhibit B4) indicates that existing and proposed landscaping areas will easily exceed that percentage, primarily due to the Type A landscape buffer along the western edge of the parking lot. The wooded areas surrounding much of the site makes the total landscaping area appear much greater.

SCC 30.25.020(4) requires a 10-foot wide Type B landscape screen between any development permitted as a CUP and road frontage. This buffer is shown on the landscape plan (Exhibit B4)

SCC 30.25.020(1) requires no perimeter landscaping for any development permitted as a CUP in the R-5 zone. However, the Applicant is proposing a 20 foot wide Type A landscape buffer along the north and south property lines, extending eastward to the beginning of the wetland and stream buffer area. The existing wooded areas of the site will be retained, and represent a heavily landscaped area.

Based on the requirements analyzed in the Findings of Fact, including Fact No. 19, the Examiner finds that the Applicant has proposed a development that will meet the requirements of Title 30 SCC.

20. Proposal is Not Materially Detrimental to Uses or Property in Immediate Vicinity.

The completed campus will be screened from adjacent residences to the north and south by the proposed 20 foot wide landscape buffers. The property to the east is separated from the proposed school by the wetland, stream, and associated buffers. Much of the existing overstory vegetation will be retained.

The topography of the site will keep much of the campus out of view from 51st Avenue due to the slope away from that road. The architectural drawings submitted (Exhibit B3) suggest a high quality building design resembling a lodge and farm buildings that will easily fit into the existing neighborhood. The testimony at the public hearing from neighbors indicates support for the project and that the addition of the school will not be detrimental to the surrounding properties and their existing uses.

21. The proposal is compatible with the site and surrounding property and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.

The proposed main school building has a “lodge like” appearance to it, befitting of a rural property. The covered bike rack “silo” provides a rural focal point for the view from the street. The design of the site keeps the buildings mostly interior to the site. Landscape buffers 20 feet wide are proposed along the north and south property lines, and the large wetland and buffer area at the south property line will further screen the site.

A condition is recommended that large over-story vegetation be retained to the greatest extent possible, to ensure that the upper portion of the site remains as compatible with neighboring properties as possible. The project as designed is compatible with the existing residences on adjacent parcels since the proposed structures are generally to be located as far away from them as possible. The proposed architectural style is appropriate and compatible with existing buildings in the area.

In summary, the Hearing Examiner finds that the proposed school will be compatible with the existing and intended character, appearance, and quality of surrounding properties. The main school building will be larger than buildings

found on adjacent properties, but the building will be partially screened by the existing vegetation and topography. The placement of the building has been situated to minimize the appearance of the building.

22. The Examiner finds that the proposal, as conditioned and designed, meets all of the requirements of Chapter 30.42C SCC and a CUP should be granted to The Attic Learning Community for the construction of the improvements described in the Exhibits, and for the operation of a private K-12 school.
23. Any Finding of Fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

The Examiner having fully reviewed the entire record and testimony provided at the public hearing and being fully informed hereby enters the following Conclusions of Law:

1. The proposal is consistent with the GMACP; GMA-based County codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.
2. Wastewater from the proposed school will be handled using an on-site septic tank and drainfield. The Snohomish Health District has reviewed the proposal and has no objections to its approval. (Exhibit G4) The Alderwood Water and Wastewater District has committed to providing water to the site. (Exhibit G3). Adequate public services exist to serve the proposal.
3. If approved with the recommended conditions, the proposal would make adequate provisions for the public health, safety and general welfare.
4. The proposed CUP with recommended precondition and conditions of approval will be consistent with the comprehensive plan and comply with the applicable requirements of Title 30 SCC.
5. The CUP, with recommended conditions of approval, will not be materially detrimental to uses or properties in the immediate vicinity.

6. The CUP, with recommended precondition and conditions of approval, will respond to as well as maintain compatibility with surrounding uses and incorporate specific features, conditions, or revisions that ensure it responds appropriately to the character, appearance, quality of development, and physical characteristics of the site and surrounding properties.
7. The proposal, as conditioned and designed, meets all of the requirements of Chapter 30.42C SCC and a CUP should be granted to The Attic Learning Community for the construction of the improvements described in the Exhibits, and for the operation of a private K-12 school.
8. The recipient of any CUP shall file a Land Use Permit Binder on a form provided by PDS with the County Auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the County, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The binder shall serve both as acknowledgement of and agreement to abide by the terms and conditions of the CUP and as a notice to prospective purchasers of the existence of the permit. (SCC 30.42C.200)
9. Any conclusion in this report and decision which should be deemed a Finding of Fact is hereby adopted as such.

DECISION

Based on the Findings of Fact and Conclusions of Law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for a **CONDITIONAL USE PERMIT** is hereby **CONDITIONALLY APPROVED**, subject to the following **PRECONDITION** and **CONDITIONS**:

PRECONDITION:

- A. A record of developer's Chapter 30.66B SCC mitigation obligations shall have been recorded with the County Auditor.

CONDITIONS:

- A. This CUP authorizes the construction and operation of a private school for grades Kindergarten through 12th grade. The maximum number of students shall be limited to 100 students.

- B. The site plans received by PDS on December 11, 2009 (Exhibit B1) shall be the approved site configuration. Changes to the approved site plan are governed by SCC 30.42C.110.

- C. Desirable over-story vegetation shall be retained during site development to the maximum extent feasible, consistent with construction requirements and ultimate building and life safety considerations.

- D. Prior to initiation of any further site work and/or prior to issuance of any development/construction permits by the County:
 - 1.A Land Use Permit Binder shall have been completed, signed, and recorded with the County Auditor's Office.

 - 2.A full drainage plan shall have been submitted and approved pursuant to the Chapter 30.63A SCC.

 - 3. The Applicant shall mark with temporary markers in the field the boundary of all Critical Area Protection Areas (CAPA) required by Chapter 30.62A SCC, or the limits of the proposed site disturbance outside of the CAPA, using methods and materials acceptable to the County.

 - 4.A critical area site plan (CASP) showing the critical area protection are (CAPA) locations on the site is required to be recorded with the County Auditor.

- E. Prior to the issuance of any building permits:
 - 1. The Applicant shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area E in the amount of \$31,806.00 (Transaction Code 5211). Credit for certain expenditures may be allowed against said payments to the extent authorized by County code.

2. The amount of \$5,842.50 shall be paid to the City of Bothell for traffic impacts to projects within the City. Proof of payment of the above amount shall be provided to the County. This payment may be made proportionately with each building permit.
 3. The Applicant shall deed property they have ownership over, not to exceed 30 feet, along the property's frontage on 51st Ave SE, to the satisfaction of the County, such that 30 feet of right-of-way shall exist on the east side of the centerline.
 4. The Applicant shall meet the requirements of the Fire Marshall and/or Fire District No. 7 in the design and construction of the development and in the operation of the school on the site.
- F. Prior to approval for occupancy or final inspection:
1. The features on the approved TDM plan shall be constructed and/or installed.
 2. Rural frontage improvements shall be constructed along the parcel's frontage on 51st Ave SE to the satisfaction of the County.
 3. The landscape plan (Exhibit B4) shall be implemented.
 4. CAPA's shall have been permanently marked on the site prior to final inspection by the County, with both CAPA signs and adjacent markers which can be magnetically located (e.g. rebar, pipe, 20 penny nails, etc.). The Applicant may use other permanent methods and materials provided they are first approved by the County. Where a CAPA boundary crosses another boundary (e.g. lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.
 5. CAPA signs shall have been placed no greater than 100 feet apart around the perimeter of the CAPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the CAPA, unless otherwise approved by the County biologist. The design and proposed locations for the CAPA signs shall be submitted to PDS for review and approval prior to installation.

Nothing in this approval excuses the Applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Decision issued this 26th day of January, 2010.

Millie Judge, Hearing Examiner Pro

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EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

Reconsideration

Any party of record may request reconsideration by the Examiner within 10 days from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **February 5, 2010**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the

signature of the petitioner or of the petitioner's attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the Applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner's decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The Applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

Appeal

An appeal to the County Council may be filed by any aggrieved party of record within 14 days from the date of this decision. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration.

Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S No. 604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before August 12, 2008, and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by the department. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

Staff Distribution:

Department of Planning and Development Services: Tom Barnett

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." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.

This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than JANUARY 26, 2011.

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
 - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
 - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant Decision is effective as of _____, _____.

Certified by:

(Name)

(Title)
