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HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. 2019105087
)	
City of Olympia)	McLane Off-Leash Dog Park
)	
)	FINDINGS, CONCLUSIONS,
For a Special Use Permit)	AND DECISION
_____)	

SUMMARY OF DECISION

The request for a special use permit to develop a 5.7-acre off-leash dog park is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request

The City of Olympia (Applicant) requested a special use permit (SUP) to develop a 5.7-acre off-leash dog park. The subject property is located at the southeast corner of Mud Bay Road NW and Delphi Road NW, east of McLane Elementary School, in Thurston County, Washington and is identified as Tax Parcel Number 12818410701.

Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on October 27, 2020. In order to ensure public access to the virtual hearing process, the record was held open two business days (through October 29, 2020) to allow written public comment from members of the public who may have had difficulty joining the virtual hearings, with additional time arranged for responses by the parties. No post-hearing public comment was submitted, and the record closed on October 29, 2020.

Testimony

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

Scott McCormick, Associate Planner, Thurston County
Dawn Peebles, Thurston County Environmental Health Division
Arthur Saint, Thurston County Public Works Department
Laura Keehan, Parks Planning and Design Manager, City of Olympia (representing Applicant)
Kurt Cross, Olympia School District

Exhibits

Through the public hearing process, the following exhibits were admitted in the record:

- EXHIBIT 1 Community Planning and Economic Development Staff Report including the following attachments:
- A Notice of Public Hearing
 - AA Zoning map
 - BB Master Application, submitted September 27, 2019
 - C Special Use Permit Application, submitted September 27, 2019
 - CC Narrative summary
 - D Vicinity Map (undated)
 - E Site plan, submitted September 27, 2019
 - F Notice of Application, dated January 3, 2020, with adjacent property owners list, dated December 19, 2019
 - G email from Laura Keehan to Amy Crass and Scott McCormick, dated January 28, 2020
 - H Integrated Pest Management Plan (IPMP) (undated)
 - I Memo from Amy Crass, Environmental Health, dated April 2, 2020
 - J Email supporting project from Amy Sohler, dated September 11, 2020
 - K Comment letter from the Nisqually Indian Tribe, dated January 7, 2019 (assumed to mean Jan. 7, 2020)
 - L Comment letter from the Nisqually Indian Tribe, dated October 21, 2019

- M Email from Donna Buxton, City of Olympia, Groundwater Protection Program Manager, dated October 31, 2019
- N Comment from Squaxin Tribe, dated October 16, 2019
- O Oregon white oak tree inventory by Sound Urban Forestry, dated July 28, 2020
- P Approval memo from Arthur Saint, P.E. with Thurston County Public Works, dated October 8, 2020

EXHIBIT 2 McLane Off-leash Dog Area – Integrated Pest Management Plan

EXHIBIT 3 Revised project narrative (undated, replaces Exhibit 1.CC)

EXHIBIT 4 Olympia Parks, Arts, & Recreation Department Drainage Scoping Report, dated March 19, 2020

Based on the record developed at the open record hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The City of Olympia (Applicant) requested a special use permit (SUP) to develop a 5.7-acre off-leash dog park. The subject property is located at the southeast corner of Mud Bay Road NW and Delphi Road NW, east of McLane Elementary School, in Thurston County, Washington.¹ *Exhibits 1, 1.B, 1.C, 1.D, and 3.*
2. The application was submitted on September 27, 2019 and determined to be complete for purposes of commencing project review on October 26, 2019. *Exhibits 1.B, 1.C, and 1.F.*
3. The subject property is approximately 16 acres in area and is zoned Rural Residential Resource – One Dwelling Unit per Five Acres (RRR 1/5). *Exhibit 1.* The purpose of the RRR 1/5 zone is “to encourage residential development that maintains the county’s rural character; provides opportunities for compatible agricultural, forestry and other rural land uses; is sensitive to the site’s physical characteristics; provides greater opportunities for protecting sensitive environmental areas and creating open space corridors; enables efficient road and utility systems; and does not create demands for urban level services.” Thurston County Code (TCC) 20.09A.010. Parks are allowed in the RRR 1/5 zone with approval of a SUP. *TCC 20.54, Table 1.*
4. The proposed 5.7-acre park would be divided into two sections, with 56,803 square feet designated for small dogs and 191,616 square feet designated for large dogs. Four-foot fencing would enclose the park and separate the small dog area from the large dog area. Each area would have a double-gated entrance on a concrete pad for visitors (plus

¹ The legal description of the subject property is a portion of Section 18, Township 18 North, Range 2 West, W.M.; also known as Tax Parcel No. 12818410701. *Exhibit 1.*

separate gates for maintenance access). Improvements include a park kiosk to on which the Applicant would post signs regarding rules, hours of operation, and parks department contact information. Amenities such as benches, a soft-surface walking path, and dog agility equipment may be provided. *Exhibits 1.E and 3; Laura Keehan Testimony.*

5. The special use chapter of the County Code contains standards that are specific to parks. These require mitigation of nighttime lighting, screening of parking facilities for more than 30 vehicles, mitigation of noise and traffic impacts on adjacent properties, compliance with the master plan for the park, and security patrol for overnight facilities. *TCC 20.54.070(25.5).*
6. The proposed park would be open from dawn to dusk; no nighttime lighting is proposed. *Exhibits 1 and 1.C.*
7. The Applicant proposes a 30-stall gravel parking area on site. Because the number of parking stalls would not exceed 30, no parking lot landscaping is required. *Exhibits 1, 1.E, and 3.*
8. The park is expected to generate approximately 80 vehicle trips per day (40 inbound and 40 outbound). Park staff would visit the site daily for routine maintenance, park monitoring, and emptying of garbage cans. This level of traffic is not expected to adversely affect adjacent properties. *Exhibits 1 and 3.*
9. The park is not expected to have adverse noise impacts on adjacent properties, as the park is buffered from residential land uses. Only McLane Elementary School is immediately adjacent to the property.² The property is otherwise surrounded by road rights-of-way, including Highway 101 to the south, WSDOT right-of-way to the east, and Mud Bay Road NW to the north. *Exhibits 1 and 1.E.*
10. The park is not governed by a master plan. *Exhibit 1.*
11. No overnight facilities are proposed. *Exhibits 1 and 3.*
12. Access to the site would be from Mud Bay Road. The proposed driveway and parking area improvements would increase impervious surfaces on the site from 2,280 square feet to 17,464 square feet. *Exhibit 3.* The County Public Works Department reviewed the project for compliance with Thurston County Road Standards and the Drainage Design and Erosion Control Manual and determined that the preliminary requirements of those documents have been satisfied. Public Works recommended approval of the project, subject to conditions as outlined in a memorandum dated October 8, 2020. The conditions are boilerplate in nature; Public Works does not have any specific concerns with respect to the project. *Arthur Saint Testimony; Exhibit 1.P.*
13. The Applicant does not propose to provide a restroom on site. *Exhibit 1.G.*

² The Olympia School District owns the subject property and was a signatory of the SUP application. *Exhibit 1.B.*

14. The City of Olympia Groundwater Protection Program Manager expressed concern regarding potential groundwater impacts due to dog feces and automobile fluids, because the subject property is within a City wellhead protection area. *Exhibit 1.M.* The Applicant proposes to address potential groundwater impacts through implementation of an integrated pest management plan (IPMP) and a solid waste disposal plan, which the County Environmental Health Division has accepted as satisfying County requirements. Environmental Health recommended approval of the project on condition that dog waste be collected as proposed and disposed of at a permitted solid waste facility. *Exhibits 1.I, 2, and 3; Dawn Peebles Testimony.*
15. Per the approved IPMP, no fertilizers, pesticides, or additional water would be applied to the site. Any bare areas would be seeded with grasses appropriate to the Pacific Northwest. Pesticides would only be used to address noxious weeds as determined by the Thurston County Weed Board when non-chemical methods are ineffective, or to address human health hazards. In such cases the pesticide would be selected from a pre-approved list. *Exhibit 2.*
16. With respect to solid waste management, the Applicant proposes to provide dog waste bags and garbage cans on site. Park rules would be posted directing dog owners to pick up waste and place it in the cans. Olympia Parks Department staff would visit the site daily to empty the cans and to pick up any remaining waste. The waste would be disposed of at the Thurston County Waste Recovery Center. *Exhibits 2 and 3.*
17. The subject property contains sufficient natural vegetation to meet the County's landscaping standards, which are designed to ensure screening between non-residential and residential land uses. *Exhibit 1.*
18. The proposed development area would be more than 300 feet from the nearest wetland and would not require removal of protected Oregon white oak trees. *Exhibits 1, 1.E, 1.O; Laura Keehan Testimony.*
19. The proposal is exempt from review under the State Environmental Policy Act (SEPA). *Exhibit 1; TCC 17.09.055.E.*³
20. The Nisqually Indian Tribe and Squaxin Island Tribe commented that they have no issues of concern but requested to be notified if there are any inadvertent discoveries of archaeological resources or human burials. This request was incorporated into the recommended conditions of SUP approval. *Exhibits 1, 1.K, 1.L, and 1.N.*
21. Notice of the open record hearing was mailed to property owners within 500 feet of the site on October 12, 2020 and published in *The Olympian* on October 16, 2020. *Exhibits 1 and 1.A.* Public comment on the proposal was submitted by one member of the public who sought a status update on the project and voices support for its approval. *Exhibit 1.J.*

³ TCC 17.09.055(E) exempts from review the construction of a parking lot designed for 30 vehicles.

There was no public comment at the virtual public hearing or during the post hearing public comment period.

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to decide special use permit applications under Sections 20.06.010 and 20.54.015(2) of the Thurston County Code.

Criteria for Review: Special Use Permit

The Hearing Examiner may approve an application for a special use permit only if the following general standards set forth in TCC 20.54.040 are satisfied:

- A. Plans, Regulations, Laws. The proposed use at the specified location shall comply with the Thurston County Comprehensive Plan, and all applicable federal, state, regional, and Thurston County laws or plans.
- B. Underlying Zoning District. The proposed use shall comply with the general purposes and intent of the applicable zoning district regulations and subarea plans. Open space, lot, setback and bulk requirements shall be no less than that specified for the zoning district in which the proposed use is located unless specifically provided otherwise in this chapter.
- C. Location. No application for a special use shall be approved unless a specific finding is made that the proposed special use is appropriate in the location for which it is proposed. This finding shall be based on the following criteria:
 1. Impact. The proposed use shall not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety, and welfare. However, if the proposed use is a public facility or utility deemed to be of overriding public benefit, and if measures are taken and conditions imposed to mitigate adverse effects to the extent reasonably possible, the permit may be granted even though said adverse effects may occur.
 2. Services. The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area.

Conclusions Based on Findings

1. With conditions of approval, the proposed use at the proposed location would comply with applicable laws and plans, including the special use standards for parks, Thurston County Road Standards, the Drainage Design and Erosion Control Manual, the Thurston County Sanitary Code, the critical areas ordinance, and the State Environmental Policy Act. *Findings 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, and 19.*

2. The use complies with the general purposes and intent of the RRR 1/5 zone and with applicable open space, lot, setback, and bulk standards. The proposal is sensitive to the site's physical characteristics and is compatible with surrounding land uses. No structures are proposed other than fencing and a kiosk. *Findings 3, 4, and 9.*
3. With conditions, the proposed use is appropriate in the location for which it is proposed.
 - a. As conditioned, the use will not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety, and welfare. No overnight facilities or nighttime lighting are proposed. The use would be screened by existing vegetation and would be separated from most uses in the vicinity by road right-of-way. Parking would be provided on site. Public health would be protected through the proposed solid waste management plan and IPMP. The conditions of approval address protection of archaeological resources. *Findings 6, 7, 8, 9, 11, 14, 15, 16, 17, 18, and 20.*
 - b. With the conditions identified by the Public Works and Environmental Health departments, the use would be adequately served by and would not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area. *Findings 12, 13, 14, 15, and 16.*

DECISION

Based on the preceding findings and conclusions, the request for a special use permit to develop a 5.7-acre off-leash dog park is **GRANTED** subject to the following conditions:

Public Health and Social Services Department Conditions:

1. All dog waste shall be collected as outlined in the project narrative, or more often if needed, and properly disposed of at a permitted solid waste facility.

Community Planning and Economic Development Conditions:

2. If contamination is suspected, discovered, or occurs during the proposed action, testing of the potentially contaminated media must be conducted. If contamination of soil or groundwater is readily apparent, or is revealed by testing, Ecology must be notified. Contact the Environmental Report Tracking System Coordinator at (360)407-6300.
3. Erosion control measures must be in place prior to any clearing, grading, or construction. These control measures must be effective to prevent stormwater runoff from carrying soil and other pollutants into surface water or storm drains that lead to waters of the state. Sand, silt, clay particles, and soil will damage aquatic habitat and are pollutants.
4. Any discharge of sediment-laden runoff or other pollutants to waters of the state is in violation of Chapter 90.48 RCW, Water Pollution Control, and WAC 173-201A, Water

Quality Standards for Surface Waters of the State of Washington and is subject to enforcement action.

5. All grading and filling of land must utilize only clean fill.
6. The existing natural site-obscuring trees, including Oregon white oaks and vegetation shall be maintained in such a way as to meet the landscaping/screening requirements of TCC 20.45.040.
7. In the case of inadvertent discovery of archaeological resources or human burial, the applicant and/or contractor must immediately stop work and contact the Washington Department of Archaeology and Historic Preservation at (360)586-3067.
8. All development shall be in substantial compliance with the approved site plan. Any expansion or alteration this use will require approval of a new or amended special use permit. Community Planning and Economic Development will determine if any proposed amendment is substantial enough to require hearing Examiner approval.

Public Works Conditions:

9. The conditions as outlined in the approval memo from Public Works dated October 8, 2020 in the record at Exhibit 1.P shall be met.

DECIDED November 5, 2020.



Sharon A. Rice
Thurston County Hearing Examiner

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

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

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

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

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

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

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

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Community Planning & Economic Development 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 **\$750.00** for a Request for Reconsideration or **\$1,041.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

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



Project No. _____
Appeal Sequence No.: _____

☐ Check here for: **RECONSIDERATION OF HEARING EXAMINER DECISION**

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

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

☐ Check here for: **APPEAL OF HEARING EXAMINER DECISION**

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

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

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

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

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

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

STANDING

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

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED _____

SIGNATURE OF APPELLANT _____

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of ☐ \$750.00 for Reconsideration or \$1,041.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____ 20____.