

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5287

AN ORDINANCE denying the appeal of a Conditional Use Permit, with conditions, on the Application of Dan Vradenburg, Chair of the Board of Trustees of Open Window School, Application No. 99-2242-LB, for a school to be located at 6128 168th Place SE, in the City of Bellevue, and granting the Conditional Use Permit with additional conditions.

WHEREAS, on July 27, 2000, the Bellevue Hearing Examiner conducted a hearing on the application of Dan Vradenburg, Chair of the Board of Trustees of Open Window School for a Conditional Use Permit, Application No. 99-2242-LB; and

WHEREAS, on August 11, 2000, the Hearing Examiner issued Findings of Fact, Conclusions of Law and Decision, granting Conditional Use Permit Application No. 99-2242-LB with conditions; and

WHEREAS, on August 23, 2000, Peter Frame and Mark Gregoire, individually and as Officers of the Cougar Mountain Residents Association, appealed the grant of the Conditional Use Permit to the City Council; and

WHEREAS, the City Council conducted a hearing on the appeal on October, 2, 2000, and remanded the matter back to the Bellevue Hearing Examiner to take additional evidence on the consistency of the proposal with the City's Comprehensive Plan and plan policies, and the applicability of the City's Traffic Standards Code, BCC Chapter 14.10; and

WHEREAS, the Bellevue Hearing Examiner took additional evidence on the remand issues on November 29, 2000, and thereafter issued Findings, Conclusions, and a Recommendation to deny the appeal on December 14, 2000; and

WHEREAS, the City Council conducted a hearing on the remanded issues on February 5, 2001, and voted to grant the appeal and deny the Conditional Use Permit; and

WHEREAS, on February 12, 2001, the City Council reconsidered its decision to grant the appeal and voted to take additional argument regarding the applicability to the proposal of certain Comprehensive Plan policies and Land Use Code provisions identified in the motion for reconsideration; and

WHEREAS, on March 5, 2001, the City Council conducted a hearing limited to additional arguments on the issues identified in the motion for reconsideration, and, after deliberation, voted to deny the appeal and approve the conditional use permit, with conditions; and

WHEREAS, on March 19, 2001, the City Council considered whether additional conditions should be required of the Applicant; and

WHEREAS, the City has complied with the State Environmental Policy Act and the City Environmental Procedures Code; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. The City Council adopts the Findings of Fact of the Hearing Examiner as set forth in "Findings of Fact, Conclusions of Law and Decision" on Conditional Use Permit Application No. 99-2242-LB, issued on August 11, 2000, and "Findings, Conclusions and Recommendation on Remand" issued on December 14, 2000.

Section 2. The City Council adopts the following additional Findings of Fact supported by the record:

1. Between 88% and 90% of the traffic from the proposed school at the site is expected to travel on Cougar Mountain Way SE. A significant amount of that traffic will also travel through the intersection between Cougar Mountain Way SE and Lakemont Boulevard. Although the intersection does not currently meet warrants for the installation of a traffic signal, one of the turning movements currently operates at Level of Service F. The traffic generated by the proposal will have an impact upon this intersection. (Transcript #1, pp 44-49.)

2. During the remand hearing conducted by the Hearing Examiner on November 30, 2000, City Staff member Chris Dreaney testified that the Transportation Department would consider installation of a traffic signal at this intersection at the time the CIP project for improvements to Cougar Mountain Way SE goes through the design process. (Transcript #4, p. 36)

3. During the remand hearing conducted by the Hearing Examiner on November 30, 2000, Wilder Dominick, Head of Open Window School, testifying on behalf of applicant, stated that the school would offer \$5000 to set aside towards the signalization of the intersection should the City determine it to be necessary to install a signal within six years. Dominick testified that \$5000 represented the applicant's understanding of its proportionate share of impacts to the intersection based on the cost of installing signalization. (Transcript #4, pp. 131-32.)

4. At the City Council hearing on the remand issues conducted on February 5, 2001, counsel for applicant, Linda Youngs, affirmed the offer to contribute \$5000 for signalization of the intersection and stated that the applicant agreed that the six year period would begin to run from the date of the issuance of the building permit for the school. City Staff member Chris Dreaney confirmed that this amount would represent the proportionate share of the proposal's impact on the intersection.

5. The proposal will generate significant amounts of traffic which would substantially impact the surrounding low-density, single-family neighborhood if not mitigated. The timing of the traffic spikes from the proposed use, if not mitigated, would have a negative effect upon the safety of school children waiting for and being dropped off by buses from the local public schools or walking to and from those buses and/or along the affected streets. (Transcript #1, p. 64)

6. In his Decision issued August 11, 2000, the Hearing Examiner imposed 13 traffic-related conditions upon the applicant for evening and weekend activity and upon the occurrence of inclement weather (Decision, Section A. Discretionary Conditions of Approval, Condition #6, p. 8)

7. In briefing submitted to the City Council on September 27, 2000 for the initial appeal hearing, applicant offered to accept the imposition of those 13 conditions, with modifications proposed by the Applicant, to all of its activities, 24 hours a day, seven days a week. (Hearing Examiner Report, Correspondence, September 27, 2000 submission of John Milne, (Applicant), pp. 152-163)

8. During the initial appeal hearing conducted by the City Council on October 5, 2000, counsel for the applicant, John Milne, affirmed the offer made in his September 27th letter. (Transcript #2, pp. 37-38.)

9. In his Decision dated August 11, 2000, the Hearing Examiner imposed Discretionary Condition No. 6 on the School prohibiting any evening or weekend use of the site not related to a School function. The stated purpose for this condition was to control potential traffic impacts to the Cougar Mountain community. (Decision, Section A. Discretionary Conditions of Approval, Condition #6, p. 8)

10. During the July 27, 2000 Hearing Examiner proceedings, Head of School Wilder Dominick testified regarding the School's desire to become part of the Cougar Mountain neighborhood and to participate in the Neighborhood Association. Dominick further testified that the School viewed its summer program, which is open to the public, to be a great program for the neighborhood children. (Transcript #1, p. 24)

11. Following the March 5, 2001 City Council limited appeal hearing at which City staff was directed to consider whether additional conditions should be imposed upon the Conditional Use Permit, the City received a letter dated March 13, 2001 from the Cougar Mountain Residents Association requesting that the Discretionary Condition No. 6 be amended to permit the School, at its sole discretion, to open its facilities to use for neighborhood activities.

12. At the City Council meeting on March 19, 2001, Linda Youngs, counsel for Applicant, affirmed the School's agreement to the amendment of Discretionary Condition No. 6 to permit the School, at its sole discretion, to open its facilities to use for neighborhood activities, stating that the amendment was supported by Comprehensive Plan Policies PA-14, -15, -16 and -17.

13. Allowing the School, in its discretion, to permit use of its facilities by neighborhood residents will not increase the amount of non-local traffic to and from the School, and will not significantly increase the amount of local traffic to and from the School.

Section 3. The City Council adopts the Conclusions of the Hearing Examiner as set forth in "Findings of Fact, Conclusions of Law and Decision" on Conditional Use Permit Application No. 99-2242-LB, issued on August 11, 2000, and "Findings, Conclusions and Recommendation on Remand" issued on December 14, 2000.

Section 4. The City Council adopts the following additional Conclusions based upon the above-adopted Findings of Fact:

1. The significant traffic generated by the proposal will also have an impact upon the intersection of SE Cougar Mountain Way and Lakemont Boulevard. It appears that a traffic signal will be warranted in the future at this intersection as a result of the cumulative impacts of this and other development proposals. The applicant has offered \$5,000 towards installation of a traffic signal at this location. \$5,000 is an appropriate amount that

represents the proportionate share of the cost to signalize this intersection to mitigate the impacts generated by this proposal on the intersection.

2. The Conditional Use Permit Criteria contained in BLUC 20.30B.140(D) require that the conditional use will not be materially detrimental to uses or property in the immediate vicinity of the subject property. The significant amount of traffic generated by the proposal has the potential to negatively impact the surrounding low-density single family properties if the Conditional Use Permit is not appropriately conditioned to mitigate those impacts. The imposition of the 13 restrictions on the school's activities found in Hearing Examiner Discretionary Conditions of Approval, Condition #6 on the activities of the school at all times, as opposed to only those times specified by the Hearing Examiner in his conditions, will appropriately mitigate the impacts on the surrounding low-density single family properties from the increased non-local traffic which is expected to be generated by this proposal.

3. Comprehensive Plan Policies PA-14, -15, -16, and -17 encourage partnerships with non-profit agencies and school districts to utilize school sites for recreation, meeting space, athletic instruction and special activities. There is material and substantial evidence in the record that by limiting the availability of the school facilities to the neighborhood, these Comprehensive Plan policies are furthered, without adding to the non-local traffic generated by the School itself, or significantly adding to local traffic to and from the site.

Section 5. Based on the foregoing Findings of Fact and Conclusions, the City Council enters the following Decision:

The City Council concludes that appellant failed to meet its burden to prove that the Hearing Examiner's Decision and Recommendation that the Conditional Use Permit be approved, with conditions, were not supported by substantial evidence in the record. The appeal is hereby denied, and the Decision of the Hearing Examiner approving the Conditional Use Permit, with conditions, is modified, and as modified is approved, subject to the following Conditions:

A. Discretionary Conditions of Approval

1. Number of Students

The school may have a maximum population of 315 students. To ensure compliance, within 7-days after the start of each school year the school administrator shall provide written notification to the City of Bellevue, Land Use Division Director, disclosing the total number of students who are registered and expect to be registered for that school year. To exceed a population of 315 students requires formal City approval per LUC and 20.30B.175.

2. Wetland Buffer Trail

The applicant has proposed to include a pedestrian trail in the wetland buffer for educational purposes. The building permit drawings shall be revised to include the proposed location and design for any foot trail within the buffer, including nodal area. The proposed trail shall exclude grading, but include the installation of a surface material that can accommodate foot traffic without damaging the buffer or wetland environments, and planting as discussed under condition 3, below. Lastly, all proposed work in the wetland buffer shall be reviewed, approved and field inspected by the project wetland biologist. The building permit submittal shall include a letter from the biologist confirming that he/she has

reviewed and approved the proposed work the wetland buffer, and will field inspect the work in progress to ensure that it is completed per the City approved plans and without damage to the wetland.

3. Wetland Buffer Planting

To ensure that any planting in the wetland buffer is done without damaging the buffer environment, the planting shall include the following notes/provisions specific to wetland buffer planting: a) All plants shall be indigenous to a wetland buffer environment, b) All planting and irrigation installation shall be done with hand tools, c) All backfill planting soil shall be free of commercial fertilizers, d) All plants shall be legally “collected” or nursery grown, e) All excavated soil for new plants shall be temporarily stored without affecting vegetation to remain and used for backfill in the planting process, f) All exposed soil around newly installed plants shall be mulched with a 3-inch layer of straw that completely covers the excavation, g) The proposed plants shall be of a scale and character that help contain activities to the trail and minimize potential damage to the buffer, h) The plants shall be irrigated by a temporary, above-ground irrigation system, i) The irrigation system shall be removed when the plants are established (maximum 2-years), and j) Damage to the buffer landscape shall be minimized during construction of the trail.

4. School Start Time

To reduce the concentration of school related traffic in the surrounding neighborhood and ensure that there is sufficient parking in the afternoon, when the student enrollment exceeds 250 the dismissal time for all students shall be staggered by twenty minutes. Secondly, the children will be dismissed by family, not class.

5. Water Quality Treatment in The Northern Portion of The Site

In order to mitigate for potential adverse impacts to water quality within the Lewis Creek Drainage Basin, the applicant may choose to comply with either of the following options:

Provide storm water runoff control facilities per the current Utility Department Engineering Standards and pay a fair share charge, including any future long term maintenance charges, for the benefit and use of the Lakemont Regional Facility,

OR

Provide both runoff control and water quality treatment facilities onsite per the current Utility Department Engineering Standards.

6. Weekend & Evening Activities

To control potential weekend and evening use of the school facilities by the school or a community group, and related traffic impacts to the community, all such activities shall be limited to Open Window School functions, unless Open Window School, in its sole discretion, opens its facilities to use for neighborhood activities.

7. Parking and Traffic Mitigation

School officials shall complete the steps identified by the project traffic consultant, including:

- a. Accommodate all parking demand on-site;
- b. When the student enrollment exceeds 250, institute two dismissal periods, twenty minutes apart, and dismiss students according to family;

- c. Actively , and in an ongoing manner, discourage the parents from using Kline Hill Road;
- d. Work with families to encourage carpooling and minimize traffic and parking demand;
- e. Work with the City of Bellevue to ensure that School Zone and reduced speed limit signs are installed as required;
- f. If acceptable to the Association, appoint a permanent School representative to the Cougar Mountain Neighborhood Association in order to have an active part in improving neighborhood conditions, and to communicate with residents of the neighborhood about parking and traffic issues on a regular basis;
- g. Within one week of the start of the school year, the School shall mail a full schedule of weekend and evening events to all homes within 200-feet of the site. Secondly, the School shall mail specific 14-day advance notice of evening and weekend school events involving more than 100 persons to all homes within 200-feet of the school site and to the Cougar Mountain Neighborhood Association;
- h. Provide qualified school staff or volunteers to manage on-site parking and traffic flow to ensure that traffic does not back up onto the frontage roads.
- i. For all School events, or when it has been determined that parking demand will likely exceed parking supply on-site, the school administration shall institute a site and parking management plan. When warranted, the plan shall include provisions for special parking (valet or tandem) and/or locating appropriate off-site parking for carpooling or van pooling to the school site;
- j. The school shall establish a weather-watch contact in the neighborhood in order to determine when school starts need to be delayed or cancelled, or alternative access plans put into effect;
- k. As part of the neighborhood association, the school shall exert efforts to maximize plowing, sanding and maintenance efforts by the City for the Cougar Mountain Area, and
- l. If acceptable to the City, the School will install or pay in lieu fees to have installed crosswalks on SE 60th St. and 168th Ave. SE to facilitate pedestrian and bicycle flow in the area.

8. Contribution to Cost of Traffic Signal

Applicant shall pay to the City the sum of \$5,000 to be set aside towards contribution to the cost to the City of Bellevue for installation of a traffic signal at the intersection of Cougar Mountain Way SE and Lakemont Boulevard. The sum paid to the City shall be returned to the Applicant in the event that a traffic signal is not installed within six years of the issuance of a building permit for the proposed school.

B. Code Required Conditions of Approval

1. Project Codes, Ordinances & City Staff Reviewers

The proposed project shall comply with all applicable Bellevue City Codes and Ordinances, including but not limited to:

Clearing & Grading Code	BCC 23.76 – E. Mecum, (425) 452-7860
Trans. Development Stds.	BCC 14.60 – L. Glas (425) 452-2841
Trans. Improvement Prog.	BCC 22.16 “ ”
Bellevue Utilities Code	BCC 24.02; J. Stewart, (425) 452-4474
Construction Codes	BCC Title 23; G. Schrader (425) 452-6451

Land Use Code	BCC Title 20; K. Thiem, (425) 452-2728
Sign Code	BCC Title 22 “ “
Noise Control	BCC 9.18 “ “
Uniform Fire Code	BCC, Bill Lehner, (425) 452-6946

a. The following code requirements (i-x) are referenced to ensure compliance with these provisions prior to issuance of any demolition, clear and grade, shoring, or building permit:

i. CODES & STANDARDS

The water, sewer, and storm drainage systems shall be designed per the new Utility Codes (adopted 4/3/95) and Engineering Standards. All design review and plan approval shall be performed under the Developer Extension Agreements. All engineering design will be to current code or Development Standards.

ii. SITE LAYOUT

Utilities Department approval of the Conditional Use / Design Review is based on conceptual designs of the water, sewer and storm drainage systems. Changes to the site layout may be required to accommodate the utilities engineering approval.

iii. SIGNAGE

Proposed signage shall be architecturally integrated with the project and sensitive to the development context. The signage shall be oriented to the movement of pedestrians and vehicles along the abutting streets.

iv. TRANSPORTATION IMPACT FEE

Payment of a transportation impact fee is required for the proposed development. The current fee is \$9.10 per student for a total of 315 students. The fee schedule is subject to change and the applicant will be required to pay the scheduled fee at the time of building permit issuance

v. FRONTAGE IMPROVEMENTS

The applicant shall provide street frontage improvements on SE 60th Street and 168th Place SE fronting the site. Improvements shall include a 5’ wide concrete sidewalk, curb and gutter, a 5’ wide future bike lane, storm drainage facilities, driveway approaches, undergrounding of utility lines, street lighting, and street widening.

vi. STREET LIGHTING PLAN

Prior to issuance of building permit, the applicant shall submit for review and approval a street lighting plan stamped by a registered professional engineer.

vii. RIGHT OF WAY USE PERMIT

Prior to the issuance of a clear and grade permit or any construction on public right-of-way, the applicant shall secure a right-of-way use permit from the City’s Transportation Department, which may include:

- (a) designated truck hauling routes,
- (b) truck loading and unloading activities,
- (c) location of construction fences,
- (d) hours of construction and hauling,
- (e) maintenance of pedestrian access,
- (f) provisions for st. sweeping, excavation, and construction,
- (g) location of construction signs and pedestrian detour routes,

(h) all construction activities as they affect public streets.

viii. OFF STREET PARKING

The applicant shall secure sufficient off-street parking for construction workers.

ix. PARKING STALL DIMENSIONS

The applicant shall revise the plans to show compliance with the minimum parking stall dimensions required by the Land Use Code, or provide the Director with more convincing facts and evidence that the proposed stall width and parking bay dimensions will adequately serve the drivers parking at this site.

x. SEASONAL RESTRICTIONS

This site is subject to seasonal restrictions. City approval for site construction from Nov. 1 through April 31 (rainy season) is contingent on the applicant implementing *extraordinary* erosion control measures. These measures shall include, but are not limited to: 1) providing a temporary erosion and sedimentation control plan (TESC) in narrative form; 2) installing a City-approved geosynthetic erosion control system; 3) installing City-approved catch basin inserts; 4) providing an erosion control pond sized for the 10-year, 24-hour storm in developed condition with 20 percent safety factor and length to width ratio of 10-to-1; 5) turbidity monitoring; 6) funding of additional inspections; and 7) providing larger abatement securities. Any time the applicant is unwilling or unable to fully prevent erosion and sediment discharge from the site the City will suspend work on the project until the dry season.

b. The following conditions (xi and xii) are referenced to ensure compliance with these provisions of the Code prior to issuance of any Certificate of Occupancy and/or final inspection:

xi. LANDSCAPE INSTALLATION ASSURANCE DEVICE

The TCO requires completion of all site landscaping or a landscape installation assurance device for 150% of the cost of labor and materials for landscaping not yet installed.

xii. LANDSCAPE MAINTENANCE ASSURANCE DEVICE

The applicant shall provide to this Department a performance assurance device equal to 20% of the cost of site landscaping (based on the landscape architect's estimated cost to provide and install all plant material shown on the City-approved landscape plan). This device shall be an Assignment of Savings, Letter of Credit, or bond from an approved bonding company. Approximately one year after occupancy of the building, site landscaping shall be inspected by the City. Following the inspection, the owner shall replace all unhealthy or dead plant material per the approved plan. Upon completion of the restoration, the assurance device shall be returned to the applicant, provided that if the owner fails to replace required material, the City shall use necessary funds from the assurance device to complete the restoration.

Section 6. This ordinance shall take effect and be in force five days after its passage and legal publication.

Passed by the City Council this 19th day of March, 2001, and signed in authentication of its passage this 26th day of March, 2001.

(SEAL)

Chuck Mosher, Mayor

Approved as to form:
Richard L. Andrews, City Attorney
Lori M. Riordan, Assistant City Attorney

Attest:
Myrna L. Basich, City Clerk

Published March 23, 2001