



DEPARTMENT OF COMMUNITY DEVELOPMENT

Joan Davenport, AICP, Director

Planning Division

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**NOTICE OF APPEAL OF ADMINISTRATIVE OFFICIAL'S DECISION & PUBLIC HEARING
July 23, 2021**

City File #: APP#001-21

This notice is being provided to parties of record, the applicant, and the appellant that a timely appeal was filed by West Valley School District on July 14, 2021 for the Administrative Official's Decision on MOD#021-21 regarding the requested site grading modifications. The decision approved the placement of a five-foot-wide walking path around the perimeter of the playfield, revised backstop and goalpost locations, reduction in asphalt for the playground, and installation of sitescreening, subject to conditions but denied the regrading of the site, in the R-1 zoning district. The subject property is located at 7 N. 88th Ave., Yakima, WA 98908.

In accordance with YMC § 16.08.018 (D), "The [Planning] division shall:

1. Set a reasonable time and place for the hearing of the appeal; and,
2. Provide a notice of appeal and public hearing to the official whose decision is being appealed and parties entitled to notice of the decision, including posting of property and published notice at least ten days prior to the hearing."

Appeal Hearing: The Hearing Examiner will hold a public hearing on **August 12, 2021 at 9:00 a.m.** in the City Council Chambers at 129 N. 2nd Street, Yakima, WA, 98901. In accordance with YMC § 16.08.018 (G), "Testimony given during the appeal shall be limited to those points cited in the appeal application." At the conclusion of the hearing, the Hearing Examiner will issue his written decision within ten working days unless a longer period is mutually agreed to by the applicant and the examiner."

Final Decision: In accordance with YMC § 16.08.108 (G), "Except as otherwise provided, all appeal decisions by the hearing examiner shall be final and conclusive on all parties unless appealed to the legislative body pursuant to this chapter."

For further information or assistance you may contact Eric Crowell, Associate Planner, at (509) 576-6736, or email to: eric.crowell@yakimawa.gov.

Eric M. Crowell

Eric Crowell
Associate Planner

Enclosures: Appeal Application



Supplemental Application For:

APPEAL

Yakima Urban Area Zoning Ordinance Chapter 15.16/Chapter 16.08

PART II – SUPPLEMENTAL APPLICATION

1. THIS APPLICATION IS AN APPEAL OF:

☒ Administrative Official's Decision

☐ Hearing Examiner's Decision

☐ Subdivision Administrator's Decision

☐ SEPA Determination

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☐ Other: _____

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2. FILE NUMBER(S) OF PROPOSAL BEING APPEALED: MOD#021-21

3. DESCRIPTION OF ACTION BEING APPEALED:

The School District challenges the Administrative Official's June 30, 2021 decision in MOD#021-21 to deny the School District's Modification Application, which requested approval of as-built elevations that are an increase over the elevations the City of Yakima approved as part of the School District's building permit for replacement of Apple Valley Elementary School.

See attached for more detailed explanation.

4. REASON FOR APPEAL - Describe the specific error(s) or issues(s) upon which the appeal is based, including an explanation of why the decision is not consistent with the Yakima Urban Area Plan, The Yakima Urban Area Zoning Ordinance, or other provisions of law. (Reference the section, paragraph, and page of the provision(s) cited.) (Attach if lengthy):

See attached.

THE HONORABLE GARY CUILLIER



BEFORE THE HEARING EXAMINER OF THE CITY OF YAKIMA

In the matter of the Appeals of:

WEST VALLEY SCHOOL DISTRICT
NO. 208, a political subdivision of the
State of Washington,

Appellant,

v.

CITY OF YAKIMA, a political
subdivision of the State of Washington,

Respondent.

MOD#21-021

NOTICE OF ADMINISTRATIVE APPEAL

West Valley School District No. 208 (the "School District") for its Notice of Administrative Appeal to the City of Yakima Hearing Examiner for review of the Administrative Official's Decision upon consideration of an Application for Modification from the School District, states and alleges as follows:

1. The subject Modification Application proposed to add a 5-foot walking path around the perimeter of the playfields, to change the backstop and goal locations, to reduce the amount of asphalt in the playground, to approve the as-built increased site elevations, and to install site-screening in certain locations. On June 30, 2021, the City issued its decision on the School District's Request for Modification. Decision at 1. The City

NOTICE OF ADMINISTRATIVE APPEAL –

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1 approved the walking path, revised backstop and goalpost locations, the reduction of asphalt
2 for the playground, and the installation of site screening. Decision at 1. However, the City
3 denied the School District's request to approve the as-built grading on the basis that the as-
4 built site grading shown in the modification application is in "excess of a 50% increase in
5 elevation from what was shown with the B200126 submittal in several locations, not
6 meeting the standard for a modification." Decision at 1. Additionally, the City found that
7 the increase in site grading "does create an adverse impact" because "the City received
8 numerous phone calls and emails from adjacent property owners" about "its negative impact
9 on adjacent property owners." Decision at 6.
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16 2. Appellant West Valley School District No. 208 ("School District") is a
17 public-school district operating in Yakima, Washington. Appellant's business address is
18 8902 Zier Road, Yakima, Washington 98909.
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21 3. Attorneys for the Appellant are Kristine R. Wilson and Julie Wilson-
22 McNerney, Perkins Coie, 1201 Third Avenue, Seattle, Washington 98101-3099.
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25 4. Attached to this Notice of Administrative Appeal as Exhibit A is the
26 appealed-from decision of the Administrative Official ("Decision"), dated June 30, 2021 and
27 as Exhibit B, a statement from the applicant in accordance with Yakima Municipal Code
28 ("YMC") 16.08.018.C.
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31 5. Appellant has standing to initiate this appeal as a party of record per YMC
32 16.08.018.A. Appellant in this matter is the applicant whose modification request was
33 denied by the City of Yakima ("City").
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36 6. Appellant is appealing the Decision on the grounds that the Administrative
37 Official exceeded her authority in issuing the Decision; the Administrative Official
38 committed an error of law; and the findings, conclusions or decision prepared by the
39 Administrative Official are not supported by substantial evidence in the following respects:
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41 a. As described in the accompanying Memorandum of Points and Authorities in
42 Support of Notice of Administrative Appeal, the Administrative Official committed an error
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1 of law by finding that the as-built elevations did not meet the criteria for a modification
2 because the elevations were in excess of a 50% increase in elevation from the building
3 permit submittal. MOD#021-21 at 5. In arriving at this determination, the City applied
4 YMC 15.17.020.C's criterion that "any expansion of use area or structure will not exceed
5 fifty percent of the gross floor area." *Id.* The City incorrectly applied the law in finding that
6 the as-built site grading is not consistent with the standards for a modification under Chapter
7 YMC 15.17.
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12 b. As described in the accompanying Memorandum of Points and Authorities in
13 Support of Notice of Administrative Appeal, the Administrative Official's finding that the
14 as-built grading would be more than a 50% increase in elevation (MOD#021-21 at 5) is not
15 supported by substantial evidence. Assuming *arguendo*, that the 50% threshold in YMC
16 15.17.020.C applicable to gross floor area increases applies to elevation changes, the City's
17 record does not support the finding that the grading changes exceed the 50% threshold.
18 Instead, the City's record demonstrates that the average increase in grade is only 32% across
19 the entire site from the permit set to the as-built conditions.
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26 c. As described in the accompanying Memorandum of Points and Authorities in
27 Support of Notice of Administrative Appeal, the Administrative Official's finding that the
28 as-built grading would cause an adverse effect is not supported by substantial evidence. The
29 City's record consistently demonstrates that the site grading would not have an adverse
30 effect and that the grading met code requirements. For the City to approve a modification
31 request, the "proposed change in the site design or arrangement" must not "in the
32 determination of the planning division . . . create or materially increase any adverse impacts
33 or undesirable effects of the project." YMC 15.17.040.B.1.c. The City found that the
34 increase in elevation "does create an adverse impact of the project" because the "new grade
35 is significantly higher in elevation than what was previously shown" on the approved
36 grading plans. MOD#021-21 at 6. The City cites to "concerns" raised by adjoining property
37 owners about "its negative impact on adjacent property owners." Decision at 6. These
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1 concerns and negative impacts are unidentified in the decision. The City's record shows that
2 grading would not have adverse effects based on the environmental review, the City's
3 surface water engineer's analysis that the site does not create any erosion or drainage
4 impacts, and the School District's agreement to mitigate aesthetic and visual impacts by
5 installing view-obscuring material on fencing on the east and south sides of the school.
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9 d. As described in the accompanying Memorandum of Points and Authorities in
10 Support of Notice of Administrative Appeal, the Administrative Official exceeded her
11 authority in applying a higher standard to the denial of the grading modification than would
12 have been applied to the initial grading permit review.
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16 e. As described in the accompanying Memorandum of Points and Authorities in
17 Support of Notice of Administrative Appeal, the Administrative Official exceeded her
18 authority in requiring the school district to regrade the site because the requirement is
19 contrary to the nexus and proportionality test. The City found that the increase in site
20 grading "does create an adverse impact" because "the City received numerous phone calls
21 and emails from adjacent property owners" about "its negative impact on adjacent property
22 owners." MOD#021-21 at 6. Because the as-built grading was deemed to be a 50%
23 increase over the elevations the City had previously approved and because the grading
24 creates an adverse impact, the City denied the School District's grading request and required
25 the School District to "regrade the site consistent with grading contours as shown in the
26 building plan submittal (B200126)." MOD#021-21 at 7. Even if there were adverse
27 impacts from the as-built elevation, the imposition of a requirement to regrade the site is
28 contrary to the nexus and proportionality test. The City may only impose requirements that
29 are proportionate to the impacts of the proposed action. No substantial evidence has been
30 provided to demonstrate the nexus or proportionality between probable impacts of the
31 proposed action and the requirement that the School District regrade the site. Therefore, the
32 Administrative Official's lacks the authority to require the school district to regrade the site.
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46 7. Appellant seeks the following relief from the Hearing Examiner:
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1 a. For an Order reversing the Modification Decision and granting the School
2 District's Modification Application with respect to grading.
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4 b. For permission to amend this Notice of Administrative Appeal based upon
5 the record;
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7 c. For such other and further relief as the Hearing Examiner deems just and
8 equitable.
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16 DATED: July 14, 2021

DocuSigned by:



58831288FAFC4EA

Kristine R. Wilson, WSBA No. 33152
Julie A. Wilson-McNerney, WSBA No. 46585
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*Attorneys for Appellants West Valley School
District No. 208*

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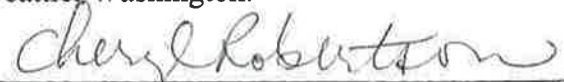
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on the date indicated below, I caused a true and correct copy of the foregoing **NOTICE OF ADMINISTRATIVE APPEAL** to be served on the following persons via the methods indicated below:

City of Yakima
Community Development Department
129 N. 2nd Street, 2nd Floor
Yakima, WA 98901

- ☐ Via U.S. Mail, 1st class, postage prepaid
- ☒ Via Legal Messenger
- ☐ Via Facsimile
- ☐ Via Overnight Mail
- ☐ Via email

DATED this 14th day of July, 2021 at Seattle, Washington.



Cheryl Robertson, Legal Practice
Assistant

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EXHIBIT A



DEPARTMENT OF COMMUNITY DEVELOPMENT

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Planning Division

Joseph Calhoun, Manager

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CITY OF YAKIMA

**FINDINGS of FACT, CONCLUSIONS, & DECISION
for
REQUEST FOR MODIFICATION
File Number: MOD#021-21**

APPLICANT: West Valley School District c/o Angela Von Essen
APPLICANT ADDRESS: 8902 Zier Rd., Yakima, WA 98908
PROPERTY OWNER: West Valley School District #208
PROPERTY OWNER ADDRESS: 8902 Zier Rd., Yakima, WA 98908
PROJECT LOCATION: 7 N. 88th Ave.
TAX PARCEL NUMBER: 181319-42006 &-42022
DATE OF REQUEST: May 28, 2021
DATE OF DECISION: June 30, 2021
STAFF CONTACT: Eric Crowell, Associate Planner



I. DESCRIPTION OF REQUEST:

Modification to the final site plan of CL3#010-19 to add a five-foot-wide walking path around the perimeter of the playfield, revised backstop and goalpost locations, a slight reduction in asphalt for the playground, regrading of the site, and installation of sitescreening in some locations, at the site of a new elementary school in the R-1 zoning district.

II. SUMMARY OF DECISION: The Modification request for the five-foot-wide walking path around the perimeter of the playfield, revised backstop and goalpost locations, reduction in asphalt for the playground, and installation of site screening are approved. The Modification request for re-grading of the site is denied.

III. FACTS:

A. Processing

1. The application for a Modification was received on May 28, 2021.
2. Additional drawings and an updated narrative were received on June 21, 2021.
3. An additional drawing showing added sitescreening was received on June 23, 2021.
4. The application was deemed complete for processing on June 30, 2021.
5. This application is being processed under the provisions of Ch. 15.17 (Modifications to Existing or Approved Uses or Development).

B. Applicable Law:

1. Yakima Urban Area Zoning Ordinance:

- a. Modification of (Use or Development) Defined: Pursuant to YMC § 15.02.020, "Modification (of use or development)" means any change or alteration in the occupancy, arrangement, placement or construction of any existing use, structure, or associated site improvement, and any change or alteration of land.
- b. Use Defined: Pursuant to YMC § 15.02.020, "Use" means the activity or purpose for which land or structures or a combination of land and structures is designed, arranged, occupied, or maintained together with any associated site improvements. This definition includes the construction, erection, placement, movement or demolition of any structure or site improvement and any physical alteration to land itself, including any grading, leveling, paving or excavation. "Use" also means any existing or proposed configuration of land, structures, and site improvements, and the use thereof.
- c. Submittals: Pursuant to YMC § 15.17.040 (A), applications for modification shall follow the submittal requirements for Type (1) review. In addition, for an approved Class (2) or (3) use or development, the applicant shall submit both the site plan previously approved by the reviewing official and a new site plan showing the location, size, and type of modification proposed by the applicant.
- d. Limits of Expansion Under Modification: Pursuant to YMC § 15.17.020, minor changes to existing or approved Class (1), (2) or (3) uses or development may qualify for abbreviated review under the provisions in this chapter, if they meet the criteria listed below. Overlay districts shall not increase the level of review for the provisions of this chapter. Modifications not meeting the criteria below must apply directly for review as a Class (1), (2) or (3) use or development.
 - i. The modification will not increase residential density that would require an additional level of review;
 - ii. The modification will not increase the amount of parking by more than ten percent or twenty spaces (whichever is least), except that the amount of parking for controlled atmosphere and cold storage warehouses may be increased by up to twenty spaces. This limit shall be calculated cumulatively for all previous modifications since the last normal review;
 - iii. Any expansion of use area or structure will not exceed fifty percent of the gross floor area. The expansion of an existing single-family home may exceed the fifty percent limit when all applicable setback and lot coverage standards are met. This limit shall be calculated cumulatively for all previous modifications since the last normal review;
 - iv. The modification will not increase the height of any structure;
 - v. This limit shall be calculated cumulatively for all previous modifications since the last normal review;

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- vi. The modification will not add a drive-thru facility; and
- vii. The modification does not include hazardous materials.
- e. Review: Pursuant to YMC § 15.17.040 (B), applications for modifications may be administratively and summarily reviewed using the Type (1) review process, in addition to the following criteria:
 - i. Any proposed change in the site design or arrangement:
 - Will not change or modify any special condition previously imposed under Class (2) or (3) review;
 - Will not adversely reduce the amount of existing landscaping or the amount or location or required sitescreening; and
 - In the determination of the Planning Division, it will not create or materially increase any adverse impacts or undesirable effects of the project.
 - ii. All proposed new structures, site improvements, or structural alterations to existing structures or site improvements comply with the development standards of YMC Ch. 15.05 through 15.08, except as approved under the adjustment or variance provisions.
- f. Sitescreening—Purpose: Pursuant to YMC 15.07.010, the purpose of this chapter is to: establish sitescreening standards to provide a visual buffer between uses of different intensity, streets and structures; reduce erosion and stormwater runoff; protect property values; and eliminate potential land use conflicts by mitigating adverse impacts from dust, odor, litter, noise, glare, lights, signs, water runoff, buildings or parking areas.

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IV. FINDINGS: The Administrative Official makes the following findings:

- A. The subject property is classified as Elementary and Middle School, a Class (3) permitted use in the R-1 zoning district (YMC § 15.04, Table 4-1, Permitted Land Uses). The project was originally approved under CL3#010-19.
- B. Regarding soil and terrain, the Environmental Checklist (SEPA#038-19) noted that "approximately 15,000 cubic yards of grading and excavation would occur during project construction. The site is anticipated to be a net balance and no significant amounts of imported or exported soils are anticipated."
- C. Status of Environmental Work – the following summary was provided by the Department of Ecology:
 - 1. It has been estimated that there are approximately 58,000 acres of lead and arsenic impacted soil in Yakima County alone and 187,588 acres impacted state wide. One of the strategies widely used in Washington State and acceptable to both Ecology and Yakima Regional Clean Air Authority (YRCAA) is capping of lead and arsenic containing soils with hardscape (asphalt or concrete) or some combination of fabric, clean soil, and mulches like bark or rock.

2. In 2012 as part of an Ecology funded project and consistent with an Ecology accepted practice, the lead and arsenic containing soil in the grass-surfaced areas at the Apple Valley Elementary site was covered by fabric and about eight inches of clean soil before grass was re-established. Areas of lead and arsenic containing soil located under buildings, parking lots and sidewalks were not disturbed during the 2012 project.
3. The 2019/2020 Apple Valley Elementary project included demolition of existing buildings and regrading of the site to facilitate the new elementary school building construction and associated stormwater management. As the new construction would disturb lead and arsenic containing soils previously capped by the 2012 Ecology lead project, the District's environmental consultant, Fulcrum Environmental Consulting, Inc. (Fulcrum), notified both the Ecology and the YRCAA that work would occur on the Apple Valley Elementary School site and reviewed the intended mitigation plan for regrading and re-capping the site with fabric and clean soil or hardscape consistent with Ecology's 2012 mitigation work.
4. Both worker and community protection measure were developed as a portion of the soil mitigation plan and was incorporated into the project specifications for the contractors to follow during construction. Contractor dust control and stormwater measures during lead and arsenic soil moving tasks has been monitored by Fulcrum and have been within the pre-project identified tolerances.
5. Construction on the Apple Valley Elementary project is nearing completion. Following is a summary of current conditions:
 - a. One stockpile of lead and arsenic soil remains onsite and is being used to finish the elevation of soil located beneath the fabric cap. Some surplus soil from this stockpile maybe removed from the site. The stockpile has been characterized and was below the dangerous waste threshold.
 - b. All lead and arsenic contaminated soil was removed from stormwater infiltration areas.
 - c. Lead and arsenic contaminated soil remaining in building footprint, asphalt parking, or concrete side walk areas have been capped with gravel and either concrete or asphalt.
 - d. Lead and arsenic contaminated soil remaining grass or landscaping areas is currently being covered with an orange geotextile fabric and clean soil.
 - e. Following clean soil placement, either sod will be added to the grass surfaced areas.
- D. This modification is being requested in order to add a five-foot-wide walking path around the perimeter of the playfield, revised backstop and goalpost locations, a slight reduction in asphalt for the playground, modified site grading, and installation of sitescreening in some locations.

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- E. Modification to Permitted Development and Uses Regulated. Pursuant to YMC § 15.17.020, the proposal complies with the following criteria in order to be considered a modification:

1. The modification will not increase residential density that would require an additional level of review.

Staff Response: *Not applicable; it is not a residential use.*

2. The modification will not increase the amount of parking by more than ten percent or twenty spaces (whichever is least), except that the amount of parking for controlled atmosphere and cold storage warehouses may be increased by up to twenty spaces. This limit shall be calculated cumulatively for all previous modifications since the last normal review.

Staff Response: *No additional parking is being proposed.*

3. Any expansion of use area or structure will not exceed fifty percent of the gross floor area. The expansion of an existing single-family home may exceed the fifty percent limit when all applicable setback and lot coverage standards are met. This limit shall be calculated cumulatively for all previous modifications since the last normal review.

Staff Response: *The school building and grounds are not being expanded from what was previously approved, as all proposed site modifications are within the Apple Valley school parcels. The number of playfields is being increased from two to three, an increase of 50 percent, meeting the standard for modification.*

The addition of the five-foot paved path around a portion of the perimeter and the reduction in playground asphalt will result in a cumulative decrease of 6 percent for overall impervious lot coverage, meeting the standard for a modification.

Grading is included in the definition of "Use" and is therefore subject to review under the Modification criteria. On-site grading has changed significantly from the grading contours submitted with the Building Permit (B200126). The new contour lines shown on the revised Modification Site Plan and narrative submitted with this application are in excess of a 50% increase in elevation from what was shown with the B200126 submittal in several locations, not meeting the standard for a modification.

4. The modification will not increase the height of any structure.

Staff Response: *The school was approved for a variance (VAR#004-19) to exceed the 35-foot height limitation in the R-1 zoning district, but no other structures are proposed that exceed the approved 44-foot height.*

5. This limit shall be calculated cumulatively for all previous modifications since the last normal review.

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Staff Response: Previous modifications (MOD#026-18, MOD#031-18) were for the placement of portable classrooms, which were eliminated with the construction of the new school.

6. The modification will not add a drive-thru facility.

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Staff Response: No drive-thru facility is being added.

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7. The modification does not include hazardous materials.

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Staff Response: The proposed modification does not introduce additional soil containing hazardous materials. See analysis provided above for on-site conditions related to soil remediation and capping under the Department of Ecology Guidelines.

- F. The proposed modification complies with all other development standards of the R-1 zoning district.
- G. The proposal will not change or modify any special condition previously imposed under the previous land use review by the Hearing Examiner in 2020.
- H. The proposal will not significantly reduce the amount of the existing landscaping. It will not reduce the amount or location of the existing required sitescreening. While an Administrative Adjustment (ADJ#027-19) was approved, waiving the requirement that view-obscuring material be added to the existing chain link fence, the applicant has agreed to add view-obscuring material to a portion of the fence along the east and south property lines.
- I. The proposed asphalt path, additional field, relocated backstop, and additional sitescreening will not create or materially increase any adverse impacts of the project.
- J. The proposed increase in site grading elevation does create an adverse impact of the project. The new grade is significantly higher in elevation than what was previously shown on the grading plans submitted with B200126. The City received numerous phone calls and emails from adjacent property owners which prompted the Building Official to issue a stop-work order. The WVSD held a neighborhood meeting on June 14, 2021 to hear the concerns and questions of neighbors. Multiple emails and phone calls were received by various City staff both prior and subsequent to the meeting about site grading and its negative impact on adjacent property owners.
- K. **Development Service Team Review:** A Development Service Team (DST) meeting was not held for technical review of the project. The following comment was received from Randy Meloy, Surface Water Engineer:
1. *Per your request I went out to Apple Valley Elementary and walked around the entirety of the path to assess the possibility of drainage impacts. The asphalt path is about five feet wide and is located close to the school's fence along the perimeter of their parcel. The cross slope of the path is generally flat, with some areas gently sloped towards the grass and other areas gently sloped towards the*

fence. It is my opinion that there would be no drainage impact on the surrounding parcels due to this paved path being close to the fence. The only possible scenario where I could see there being any kind of drainage issue would be on the south side if the school overwatered with the sprinklers, and because the main grassy area is elevated, you could get runoff from the sloped grassy areas making its way towards the perimeter. If that happened there is still a ten foot separation between the school's fence and the neighbor's fences. Much of the runoff would infiltrate into the ground in this area. This is assuming there would be some problem with the school irrigation and that is unlikely. Along the east side of the school there is a small gravel berm between the path and the fence which would help to contain any runoff that might get there. Again, I would not anticipate any issues there.

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Last night and this morning there was a decent amount of rainfall at the school, and while walking the path I looked for signs of erosion and did not find any. This path is only five feet wide and it is my opinion that it will not cause any drainage problems.

V. CONCLUSIONS:

- A.** The Administrative Official has reviewed the addition of a five-foot-wide walking path around the perimeter of the playfield, revised backstop and goalpost locations, a slight reduction in asphalt for the playground, and installation of sitescreening in some locations against the standards and requirements for a Modification under YMC Ch. 15.17 and has concluded that they are consistent with said standards and requirements.
- B.** The proposed site grading is not consistent with the standards and requirements for a Modification under YMC Ch. 15.17.
- C.** All other development standards of the R-1 zoning district will be met.
- D.** The revised site plans submitted on June 21 and 23, 2021 shall serve as the final site plans for items approved under this Modification.

VI. DECISION:

The Administrative Official hereby determines that the requested Modification application (MOD#021-21) to add a five-foot-wide walking path, increase the number of fields from two to three, revised backstop and goalpost locations, a slight reduction in asphalt for the playground, and installation of additional fencing to an existing Class (3) use is **approved**, and authorizes the issuance of the permit(s) based upon the above findings and conclusions and subject to the Building Official's determination of compliance with all building codes.

The Administrative Official hereby determines that the requested Modification application (MOD#021-21) for site grading is **denied**, and requires the applicant to regrade the site consistent with grading contours as shown in the building plan submittal (B200126).

Entered this **30th day of June, 2021**, pursuant to the authority granted under YMC Ch. 15.17. This decision constitutes the final zoning review and is hereby granted and forwarded to the Building Official.

This zoning decision is valid for one year from this date unless appealed under the Yakima Municipal Code. The zoning decision may be extended one time up to one additional year prior to the expiration date, as set forth in YMC § 15.12.060. This zoning decision is not a construction permit and does not in and of itself authorize any use to be established, constructed, made or implemented without a construction permit issued by the Building Official and the conditions pending have been completed. This zoning decision shall expire if: a) a construction permit and/or business license for the approved project is required but not issued within one year from the date of issuance of this final decision; b) the construction permit and/or business license is issued but allowed to expire; or c) the project is modified and a new zoning decision is issued.

The issuance of any permit, subsequent permit inspection, land use decisions, or other related applications by the City of Yakima shall not be construed as an approval for work to be performed in violation of any government (Federal, State or Local) order to cease or limit construction activities during the COVID-19 emergency period outlined in such order.


Joan Davenport, AICP, Community Development Director

APPEAL

Pursuant to YMC 15.17.040 and 15.17.050, uses or developments denied under this chapter may submit applications for review under the normal review provisions for the use. Decisions by the planning division regarding approval or denial of administrative modifications may be appealed as prescribed by the applicable review. All appeals shall be filed within fourteen days following the mailing of the final decision by the Administrative Official or designee. Appeals must be submitted in writing to the City of Yakima, Community Development Department; 129 N. 2nd St., Yakima, WA 98901. If a final decision does not require mailing, the appeal shall be filed within fourteen days following the issuance of the final decision.

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EXHIBIT B

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THE HONORABLE GARY CUILLIER

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BEFORE THE HEARING EXAMINER OF THE CITY OF YAKIMA

In the matter of the Appeals of:

WEST VALLEY SCHOOL DISTRICT
NO. 208, a political subdivision of the
State of Washington,

Appellant,

v.

CITY OF YAKIMA, a political
subdivision of the State of Washington,

Respondent.

MOD#021-21

DECLARATION OF DR. PETER FINCH

I, Dr. Peter Finch, declare and state as follows:

1. I am over the age of eighteen years, make this declaration on personal knowledge of the facts stated herein, and am competent to testify.

2. I am currently the Acting Superintendent of Schools for the West Valley School District. I have served as an Assistant Superintendent at the West Valley School District since 2001.

3. I have read the appeal of the City of Yakima's partial denial of MOD#021-21 and believe the contents to be true.

DECLARATION OF DR. PETER FINCH – 1

Perkins Coie LLP
1201 Third Avenue
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

1 I declare that the foregoing is true and correct to the best of my knowledge and
2
3 subject to the penalty of perjury under the laws of the state of Washington.
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5

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7 Dated this 14th day of July, 2021, at Yakima, Washington.
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Dr. Peter Finch, Acting Superintendent

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CITY OF YAKIMA
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DECLARATION OF DR. PETER FINCH - 2

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Perkins Coie LLP
1201 Third Avenue
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

CERTIFICATE OF SERVICE


I certify under penalty of perjury under the laws of the State of Washington that on the date indicated below, I caused a true and correct copy of the foregoing

DECLARATION OF DR. PETER FINCH to be served on the following persons via the methods indicated below:

City of Yakima
Community Development Department
129 N. 2nd Street, 2nd Floor
Yakima, WA 98901

- ☐ Via U.S. Mail, 1st class, postage prepaid
- ☒ Via Legal Messenger
- ☐ Via Facsimile
- ☐ Via Overnight Mail
- ☐ Via email

DATED this 14th day of July, 2021 at Seattle, Washington.


Cheryl Robertson, Legal Practice
Assistant

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CITY OF YAKIMA
COMMUNITY DEVELOPMENT

DECLARATION OF DR. PETER FINCH – 3

Perkins Coie LLP
1201 Third Avenue
Seattle, WA 98101-3099
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