

**WEST VALLEY SCHOOL DISTRICT / APPLE VALLEY  
ELEMENTARY  
APP#008-21  
(MOD#021-21, APP#001-21)**

**City Council  
Closed Record Appeal Hearing  
November 16, 2021**

**EXHIBIT LIST**

Applicant: West Valley School District – Peter Finch  
File Numbers: APP#008-21  
Site Address: 7 N. 88<sup>th</sup> Avenue  
Staff Contact: Eric Crowell, Associate Planner

**Table of Contents**

CHAPTER AA	Hearing Examiner's Decision
CHAPTER BB	Appeal to City Council Applications
CHAPTER CC	Appeal Responses & Appellant Rebuttal
CHAPTER A	Staff Report
CHAPTER B	Maps
CHAPTER C	Site Plan
CHAPTER D	DST Review & Agency Comments
CHAPTER E	Public Notices
CHAPTER F	Public Comments
CHAPTER G	Land Use Application & Decision for MOD#021-21
CHAPTER H	Supplemental Information/Additional Comments

**(MOD#021-21, APP#001-21)**

## EXHIBIT LIST

## CHAPTER AA

### Hearing Examiner's Decision

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**City of Yakima, Washington  
Hearing Examiner's Decision**

August 26, 2021

**In the Matter of an Appeal by the )  
West Valley School District of an )  
Administrative Official's Decision )  
Regarding One of Five Requests )  
For a Minor Modification to the )  
City's Approved Site Plan for the )  
Apple Valley Elementary School )**

**APP#001-21  
MOD#021-21**

**A. Introduction.** The main procedural aspects of the open record public hearing that was conducted by the Hearing Examiner on August 12, 2021, may be summarized as follows:

(1) The Administrative Official, City of Yakima Community Development Director Joan Davenport, issued a decision on June 30, 2021, relative to a request for the Minor Modification of the site plan previously approved for the Apple Valley Elementary School. The decision approved as a Minor Modification 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 sight-screening in some locations which were four of the modified features shown on the revised site plans submitted on June 21 and June 23, 2021 (*Document Index B-3 and G-3*). The decision did not approve as a Minor Modification the increase in elevation of grading contours of portions of the site beyond what the City had previously approved for building permit B200126 in 2020. That denial was based on a finding that the increase in site grading elevation creates an adverse impact of the project (*Document Index E-3 and G-4*).

(2) A courtesy copy of the Administrative Official's decision was sent to

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

adjacent property owners who had emailed concerns to the City about the increase in elevation of the site (*Testimony of Joan Davenport*). A section at the end of the decision entitled "APPEAL" set forth instructions as to how decisions by the Planning Division regarding approval or denial of administrative modifications may be appealed within fourteen days. West Valley School District (hereafter "WVSD") appealed the Administrative Official's denial of the increase in the site grading elevation of the playgrounds and playfields as a Minor Modification. There is no indication in the record that anyone appealed the changes that were approved as part of the Minor Modification request. If those aspects of the Minor Modification were appealed, they were not included within this Appeal proceeding and are not before the Hearing Examiner as part of this Appeal.

(3) Testimony of City Associate Planner Eric Crowell recommended that the Appeal be denied and that the Administrative Official's failure to approve the requested increase in the site grading elevation of portions of the site as a Minor Modification of the approved site plan be affirmed for reasons set forth in his staff report (*Document Index A-1*). Testimony in favor of denial of the Appeal and affirmance of the Administrative Official's decision was also presented by City Attorney Sara Watkins; by Community Development Director Joan Davenport; and by adjacent property owner John Manfredi.

(4) Testimony in favor of the Appeal to authorize the increase in the site grading elevation of portions of the site as a Minor Modification was submitted by appellant's attorney Julie A. Wilson-McNerney of the law firm of Perkins Coie LLP; by the Project Architect at Design West Architects, Matthew Whitish, AIA; by the Bond Oversight Committee Chairman, Peter Marinace; and by a parent of two Apple Valley Elementary School students, Chris Jevne.

(5) Written comments in favor of the Appeal seeking approval of the requested increase in the site grading elevation of portions of the site as a Minor Modification were submitted by appellant's attorneys, Kristine R. Wilson and Julie A. Wilson-McNerney of Perkins Coie LLP (*Document Index D-1, G-2, H-5 and H-6*); by appellant's Acting Superintendent of Schools, Dr. Peter Finch (*Document Index D-1*); by a commenter who described herself as a taxpayer, Michelle Mueller (*Document Index F-2*); by a parent of an Apple Valley Elementary School student, Jamie Mathews (*Document Index H-1*); by a West Valley resident, Ryan K. Mathews (*Document Index H-3*); by a resident living across Barge Street north of the school, Oscar Rodriguez (*Document Index H-7*); and by the Bond Oversight

Committee Chairman, Peter Marinace (*Document Index H-8*).

(6) Written comments in opposition to the Appeal and in favor of affirming the Administrative Official's decision were submitted by Associate Planner Eric Crowell (*Document Index A-1*); by Administrative Official Joan Davenport (*Document Index H-4*); by adjacent resident Julia Ericson (*Document Index F-1*); by adjacent resident Stuart McCurdy (*Document Index F-3*); by adjacent residents Kevin and Melanie Cox (*Document Index F-4*); by adjacent residents John and Candace Manfredi (*Document Index F-5 and H-2*); by adjacent resident Thela McCurdy (*Document Index F-6*); and by adjacent residents Erasmo and Lorena Carranza (*Document Index F-7*).

(7) Extensive written, photographic, illustrative and oral evidence was presented in this matter. Any attempt to summarize the evidence that was relative to the grounds set forth for this Appeal could not as a practical matter include all of the many points in their context that were submitted as evidence, but anyone interested in reviewing all of the evidence in its full context may do so by reviewing the documents submitted for this record and by viewing the hearing on the City's website entitled "yakimawa.gov" by clicking on "City Council" and then on "City Council Videos" and then on "City of Yakima Hearing Examiner 8/12/2021." The Hearing Examiner has more than once reviewed all of the written, photographic and illustrative evidence, as well as all of the testimonial evidence presented at the hearing. The following Findings, Conclusions and Decision are the result from that review and consideration of all of the evidence in the record and presented at the hearing which pertains to the stated grounds for this Appeal. These Findings, Conclusions and Decision have been issued within ten working days of the date of the open record public hearing as required by Subsections 16.08.018(G) and 16.08.020(C) of the Yakima Municipal Code (YMC).

**B. Basis for Decision.** Based upon the Hearing Examiner's view of the site on August 10, 2021, without anyone else present; his consideration of the staff report, the appeal information, the exhibits, the testimony and other evidence presented at the open record public hearing on August 12, 2021; and his consideration of the provisions of the City's Zoning Ordinance, Title 15 of the Yakima Municipal Code

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

(YMC), which apply to the Appellant's grounds for appeal; the Hearing Examiner makes and issues the following Findings, Conclusions and Decision:

## **FINDINGS**

**I. Background of Appeal.** The background facts pertinent to this appeal may be summarized as follows:

(1) When the City investigated a complaint regarding the construction of a walking pathway at Apple Valley Elementary School, it found that the school and parking areas had been constructed in accordance with the site plan that was approved on April 7, 2020 for the building permit (B200126), but it was determined that the playground areas, fields and pathway were in some areas one to three feet higher than shown on the approved site plan. A stop work order was placed on the playground and playfield portions of the project on May 26, 2021. WVSD applied for a modification of the approved site plan on May 28, 2021 which would add the pathway that had been constructed around the south and east perimeter of the school site. The City recommended during a virtual meeting with WVSD on June 4, 2021 that WVSD meet with the concerned neighbors to hear their comments. After WVSD sent email notices to neighbors on June 8, 2021, it held a meeting with neighbors to hear their concerns on June 14, 2021. The City's Community Development Director who is the Administrative Official, Joan Davenport, attended that meeting and heard neighborhood concerns, including concerns about the increase in the site grading elevation of portions of the playground and playfields at issue in this Appeal. She also visited the school campus. On June 21, 2021, an amended application was submitted to also modify backstop and goalpost locations for the playfields, to slightly reduce the asphalt area for the playground, to change some of the fencing and to allow the grading of the playfields to remain at the as-built elevations rather than at the previously approved elevations. The City Planning Division determined that the application was complete and the Administrative Official issued the decision relative thereto on June 30, 2021 (*Document Index H-4 and E-3*).

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AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

(2) The decision approved as a Minor Modification the five-foot-wide walking path around the perimeter of the playfields, the revised backstop and goalpost locations, the reduction in asphalt for the playground, and the installation of sitescreening, but it did not approve as a Minor Modification the as-built increase in the site grading elevation of portions of the playground and playfield areas of the site.

(3) West Valley School District timely appealed the latter aspect of the Minor Modification decision on July 14, 2021. Public notice of the Appeal hearing set for August 12, 2021 was given by mailing notice to the parties of record and the applicant/appellant on July 23, 2021, as well as by publishing notice in the Yakima Herald-Republic on July 23, 2021 and posting land use action signs on the site on August 2, 2021 in accordance with YMC §16.08.018(D). The Hearing Examiner conducted the open record public hearing pursuant to the jurisdiction conferred by YMC §15.20.040(C)(1)(f) and §16.08.018(G).

(4) YMC §15.17.020 states that minor changes to approved Class (1), (2) or (3) uses may qualify for abbreviated review if they do not exceed certain listed criteria consisting of seven types of limitations on the nature of the change. The limitation prescribed by YMC §15.17.020(C) is that any expansion of use area or structure will not exceed 50% of the gross floor area. YMC §15.17.040(B)(1) provides that applications for modifications may be summarily and administratively reviewed by using the Type (1) review process plus the additional consideration of three specified criteria. The third criterion in YMC §15.17.040(B)(1)(c) is that the proposed change in the site design or arrangement, in the determination of the planning division, will not create or materially increase any adverse impacts or undesirable effects of the project.

(5) YMC §15.17.040(C) provides that if in utilizing the Type (1) review process the proposed modification does not meet all of the requirements of section 15.17.040, it shall be denied and may be the subject of an application for review under the normal review provisions for the use. The normal review provisions for this use would be the Type (3) review provisions for elementary school uses in the Single-Family Residential (R-1) zoning district. Besides requiring public notice and an open record public hearing by the Hearing Examiner, Type (3) review of Class (3) uses defined in YMC §15.02.020 also requires the consideration of several criteria such as compatibility with the neighborhood and authorizes the imposition of conditions if they would adequately resolve difficulties related to compatibility.

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

Such alternatives are not available in the abbreviated, summary, administrative Type (1) Minor Modification process which according to YMC §15.17.040(C) must result in either approval or denial of the requested change. YMC §15.17.020 likewise provides that denial of requested changes under the abbreviated Type (1) Minor Modification procedure that do not meet the criteria must apply for review as a Class (1), (2) or (3) use or development.

(5) YMC §16.08.018(A) provides that an Administrative Official's decision may be appealed to the Hearing Examiner. YMC §16.08.018(C) states that all appeals shall specifically cite the action being appealed, the error(s) or issue(s) to be considered, and explain why the action is not consistent with the provisions of the Yakima urban area comprehensive plan, this title or other provisions of law. YMC §16.08.018(G) requires that testimony given during the appeal shall be limited to those points cited in the appeal application. YMC §16.08.020(A) provides that the Hearing Examiner shall hear appeals de novo which means that open record appeal hearings shall be conducted. YMC §16.08.014 states that the appellant shall bear the burden to demonstrate that there is at least one of four specified types of error in the decision of the Administrative Official. YMC §16.08.018(H) provides that decisions by the Hearing Examiner shall be final and conclusive unless appealed to the Yakima City Council in accordance with YMC §16.08.020(C), §16.08.025 and §16.08.030 which would result in a stay of actions of the Administrative Official in accordance with YMC §16.08.050.

**II. The Hearing Examiner's Findings as to the Appellant's First Ground for the Appeal to the Effect that the Administrative Official Committed an Error of Law in Partially Denying the Modification Application.**

(1) The appellant correctly points out that YMC §15.17.020(C) which allows any expansion of use area and structure not exceeding fifty percent of the gross floor area to be considered as a Minor Modification if it satisfies the additional criteria in YMC §15.17.040 is inapplicable to increases in site grading elevation even though grading is specifically included in the definition of a "use" in YMC §15.02.020. This contention is supported by the definition of "gross floor area" in YMC §15.02.020 and YMC §15.06.040(A). Gross floor area is defined as the total square

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AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

footage of all floors in a structure which is to be determined in a specified manner and which can only be applied to an increase in the site grading elevation of a use area by analogy.

(2) The Administrative Official did in fact apply the potential type of Minor Modification described in YMC §15.17.020(C) by analogy for evaluation purposes to the appellant's requested increase in the site grading elevation of the site. She applied that provision to individual elevation increases in any of the contours that were compared rather than to the average percentage increase in elevation over the entire site (*Document Index A-1, page 2 of the staff report*). The Planning Division's interpretation of that provision to allow consideration of some grading changes by analogy to constitute Minor Modifications if they also meet the additional criteria in YMC §15.17.040 was at most harmless error.

(3) The Administrative Official's interpretation of YMC 15.17.020(C) did not prejudice the appellant. That is because the appellant's requested increase in site grading elevation could not otherwise be considered as a Minor Modification under any circumstances absent the use of that provision by analogy. The appellant could not point to any ordinance provision specifying how a percentage increase in grading elevation is to be determined by analogy. Applying YMC §15.17.020(C) to this situation by analogy also did not prejudice the appellant because the Administrative Official also went further and also considered the requested modification under the additional criteria of YMC §15.17.040. Consideration of the requested modification under the additional criterion of YMC 15.17.040(B)(1)(c) resulted in a determination that "The proposed increase in site grading elevation does create an adverse impact of the project" (*Document Index E-3 and G-4, page 6 of the decision*).

**III. The Hearing Examiner's Findings as to the Appellant's Second Ground for the Appeal to the Effect that the Administrative Official's Finding that the As-Built Grading Would Be More Than a 50% Increase in Elevation is Not Supported by Substantial Evidence.**

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

(1) The appellant correctly described “substantial evidence” as “evidence of a sufficient quantity to persuade a reasonable person that the declared premise is true.” Some cases refer to the fictitious person being persuaded as a “fair-minded person.” *E.g. Ostrum Mushroom Farm Co. v. Wash. State Dep’t of Labor and Industries*, 13 Wn.App.2d 262, 271, 463 P.3d 149, 154 (2020).

(2) The appellant’s uncontradicted evidence was to the effect that the average increase in the as-built site grading elevation across the entire site is 32% rather than in excess of the 50% referenced in YMC §15.17.020(C). That is because portions of the southern playfield were graded at an elevation one to three feet higher than approved by the City in 2020, while the finished elevation in other areas of the site is one foot lower than shown in the approved site plans (*Document Index D-1, pages 9-10 of appellant’s memorandum*).

(3) The Administrative Official did not use the average increase in site grading elevation in determining that the increase in site grading elevation exceeded 50%. She rather determined that the elevation of any contour line on the site plan for the modification request which exceeded by more than 50% the elevation of the contour line it crossed on the site plan previously approved with building permit B200126 in fact by analogy violated the 50% limitation in YMC §15.17.020(C) required for administrative approval as a Minor Modification. (*Document Index A-1, page 3 of the staff report*).

(4) In this regard it is difficult to apply YMC §15.17.020(C) by analogy to an increase in the site grading elevation of a site because an increase in gross floor area would be determined by considering the total square footage increase in floor area in all applicable locations throughout a building without being an average increase or being an increase that is exceeded only in certain areas. Here the adverse impacts of the project cited by adjacent residents consist mainly of an increase in site grading elevation in the areas relatively near adjacent residences which diminish the effectiveness of their perimeter sitescreening as a visual buffer between the school and their residential uses of different intensity contrary to YMC §15.07.010.

(5) Interpreting YMC §15.17.020(C) to mandate consideration of the average increase in the site grading elevation across the entire site would result in consideration of areas away from the adjacent neighbors that would not be relevant to their concerns and would ignore the full extent of any increases in the site grading

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

elevation that are near enough to the adjacent neighbors to significantly diminish the effectiveness of their sitescreening. The Administrative Official's approach and determination as to the applicability by analogy for evaluation purposes of YMC §15.17.020(C) focused upon the adverse impacts reported by neighbors rather than upon the average increase in site elevation which was not the problem reported by the neighbors. Her determination is supported by substantial evidence in the record which consists of (i) the differences between the contour lines on the site plan submitted for the modification application and the contour lines on the site plan previously approved for the building permit and (ii) the written comments, photographs, illustrations and testimony of adjacent neighbors which have been submitted for the record of this de novo open record hearing appeal procedure.

(6) Even if the Administrative Official should have utilized the average increase in site grading elevation across the entire site, again any error was harmless. The failure of the increase in site grading elevation to satisfy the percentage limitation in YMC §15.17.020(C) was not the Administrative Official's only basis for refusing to approve the requested increase in the site grading elevation as a Minor Modification. A second and independent basis for refusing to summarily approve the increase in site grading elevation administratively as a Minor Modification was her determination that it creates an adverse impact of the project so as to be disqualified from approval as a Minor Modification under the third criterion prescribed by YMC §15.17.040(B)(1)(c) (*Document Index E-3 and G-4, page 6 of the decision*).

**IV. The Hearing Examiner's Findings as to the Appellant's Third Ground for the Appeal to the Effect that the Administrative Official's Finding that the As-Built Grading Would Cause an Adverse Effect is Not Supported by Substantial Evidence.**

(1) YMC §15.17.040(B) provides in part that applications for modifications may only be administratively and summarily reviewed using the Type (1) review process if in the determination of the Planning Division, it will not create or

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

materially increase any adverse impacts or undesirable effects of the project. YMC §15.02.020 defines the Planning Division as the Department of Community Development of the City of Yakima and the Administrative Official as the duly appointed City of Yakima Director of Community Development. Here the Director of Community Development specifically determined that the site grading elevation does in fact create an adverse impact of the project that prevented it from being processed administratively by the summary Minor Modification process. Her specific determination in regard to the adverse impact of the site grading elevation was as follows:

“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.”

*(Document Index E-3 and G-4, page 6 of the decision).*

(2) The Administrative Official’s determination relative to the Minor Modification requirement of YMC §15.17.040(B)(1)(c) was based upon her personal knowledge of neighbors’ concerns relayed to the Planning Division by emails and phone calls and expressed at the neighborhood meeting held on June 14, 2021, which she attended. YMC §15.17.020 and §15.17.040(C) state that the effect of that determination is in this situation to require consideration of the requested modification of the site grading elevation by means of an application for Type (3) review rather than by means of the abbreviated, summary, administrative Type (1) Minor Modification review process.

(3) The appellant correctly points out that the City’s Surface Water Engineer determined that the as-built conditions at the school would not cause erosion or drainage problems. That does not mean, however, that the increase in site grading elevation to a significantly higher elevation than what was approved would not create other problems. The most obvious adverse impact from such an increase in

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

the site grading elevation is described in the Planning Division staff report as follows:

“Because the elevation changes by a few feet in some locations, this reduces the effectiveness of the view-obscuring sitiescreening material the school district agreed to install upon an existing six-foot-tall fence.”

*(Document Index A-1, page 3 of the staff report).*

(4) The Administrative Official’s decision approved the requested Minor Modification for six-foot-tall view-obscuring fencing along the south and southeast perimeter of the site. The Administrative Official’s decision contains a reference to one of the purposes of sitiescreening set forth in YMC §15.07.010. One of the purposes of sitiescreening is to provide a visual buffer between uses of different intensity such as between school playgrounds/playfields and adjacent residences. *(Document Index E-3 and G-4, page 3).* Increases in site grading elevations can reduce the effectiveness of the six-foot-high view-obscuring fencing to varying degrees depending upon where those increases in elevation are located.

(5) Since YMC §16.08.020(A) provides that the Hearing Examiner shall hear appeals de novo at an open record hearing, the written comments, photographs, illustrations and testimony presented for the appeal must be considered in deciding whether there is substantial evidence in the record to support the Administrative Official’s determination to the effect that the increase in site grading elevation creates an adverse impact of the project so as to preclude its administrative approval summarily as a Minor Modification. Additional evidence presented for the record of this proceeding relative to the adverse impacts of the increase in site grading elevation includes evidence to the effect that (i) the building permit approval included regrading the south and east playgrounds/playfields to raise their elevation from one to four feet over what existed at that time *(Document Index F-1 and F-5)* and (ii) the additional subsequent increase in the site grading elevation of three to four feet more only 20 to 40 feet from the south and east property lines is now enough for some of the adjacent residents to see people over a six-foot-high view-obscuring fence from the waist up and to allow people to see into their yards and windows so as to create adverse impacts to some of the adjacent residents’ privacy, security, personal safety, property damage and/or property values *(Document Index F-1, F-3, F-4, F-5, F-6 and F-7).* The testimony presented at the hearing by an adjacent property owner was consistent with his written comments, and he again

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

indicated that the neighbors should be compensated for the adverse impacts to their property caused by the increase in the site grading elevation if that change is approved (*Testimony of John Manfredi; Document Index F-5*). The written evidence, photographs, illustrations and testimony in the record as to adverse impacts due to the increase in site grading elevation is not speculative because it is based on already as-built elevations rather than on possible future impacts of possible future elevations.

(6) The written comments and testimony of adjacent neighbors that were submitted for the record of this proceeding as Document Index F-1, F-3, F-4, F-5, F-6 and F-7 in and of themselves constitute substantial evidence supporting the determination of the Administrative Official to the effect that the increase in the site grading elevation of the site creates an adverse impact of the project. This determination under the plain language of YMC §15.17.040(B)(1)(c) is solely hers to make because this is an abbreviated, summary, administrative Minor Modification process. This Minor Modification process does not involve determinations as to credibility, compatibility or the imposition of conditions to resolve difficulties related to the compatibility of a proposal which are involved by definition per YMC §15.02.020 in the consideration of Class (3) uses by Type (3) review. The Minor Modification process is rather a summary process which must result in either approval or denial based in part upon a determination of the Planning Division. That determination here is supported by substantial evidence.

**V. The Hearing Examiner's Findings as to the Appellant's Fourth Ground for this Appeal to the Effect that the City Exceeded Its Authority in Requiring the School District to Regrade the Site.**

(1) The language of the Administrative Official's decision following her denial of the requested increase in site grading elevation as a Minor Modification accurately describes what will result if the applicant/appellant should fail to be successful in an appeal of the Administrative Minor Modification decision and/or should fail to obtain approval of the increase in the site grading elevation of the site through the Type (3) review process. Absent success in pursuing one or both of those alternatives set forth in YMC §16.08.025 and §16.08.030 and/or YMC

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

§15.17.020 and §15.17.040(C), it is true that the applicant/appellant will be required to regrade the site consistent with grading contours shown on the elevation site plan submittal for B200126 because that is the most recent City approval of the grading contours of the site. If that becomes a requirement, the requirement would be attributable to the appellant's action in increasing site grading elevations of the site beyond what the City had approved rather than attributable to any action by the City.

(2) The nexus and proportionality test do not apply to this situation because the Administrative Official's decision does not require an exaction or any mitigation measures, but rather leaves unaffected the grading contour requirements of the approved 2020 building permit which was not appealed and which will remain as the grading contour requirements for the site if the Administrative Official's decision is not changed as a result of the appeal process and/or the Type (3) review process.

#### **VI. The Hearing Examiner's Conclusions as to the Appellant's Grounds for this Appeal.**

(1) The Administrative Official did not commit an error of law in partially denying the modification application.

(2) The Administrative Official's finding that the as-built grading would be more than a 50% increase in elevation at some places on the site where contour lines of the site plan submitted with the modification application cross contour lines of the site plan approved for building permit B200126 is supported by substantial evidence.

(3) The Administrative Official's finding to the effect that the increase in the site grading elevation creates an adverse impact of the project is supported by substantial written, photographic, illustrative and oral evidence which is contained within the record of this proceeding.

(4) The City did not exceed its authority in requiring the School District to regrade the site because that is already required by the approved building permit site plan for B200126 which was not appealed. It is not a new requirement imposed by the Administrative Official. It is rather an existing building permit requirement that

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

could still be eliminated by a successful appeal of the Administrative Official's decision or could still be eliminated or modified through Type (3) review.

(5) Due to the summary nature of the Minor Modification process, the written and oral evidence submitted at the hearing in favor of approving the Minor Modification which has all been reviewed and considered by the Hearing Examiner cannot here result in a reversal of the Administrative Official's decision because it fails to satisfy the appellant's burden to prove at least one of the four specific grounds required for a successful Appeal of a Minor Modification even though it may be persuasive in other contexts.

(6) The consequence of a failure to satisfy all of the criteria for a Minor Modification is that the applicant/appellant can apply for Type (3) review of the modification request for an increase in the site grading elevation of the site. That type of review would involve notice and a public hearing before the Hearing Examiner or Pro Tem Hearing Examiner. During that type of review, the written comments and testimony of those in favor of the modification of the site grading elevation that were presented for this Appeal, as well as additional written comments and testimony, could be presented and be considered under different criteria than are required for the administrative approval of a Minor Modification. If this modification request is set for a Type (3) review hearing in the future, the Planning Division may consider assigning that review to the Pro Tem Hearing Examiner since a third review of the site features for this new school could involve argument as to the intent and effect of this Hearing Examiner's two prior decisions in that regard which in turn might give rise to the need to address an appearance of fairness assertion or issue that could possibly be raised at the beginning of a future hearing.

(7) If the appellant applies for Type (3) review of the requested increase in the site grading elevation of the site and/or appeals this decision within the requisite fourteen days of mailing this decision, then the increase in site grading elevation will not immediately become a code compliance issue due to the stay prescribed by YMC §16.08.050. But otherwise the Administrative Official's requirement to regrade the site consistent with grading contours shown in the building plan submittal for B200126 will become a code compliance issue since the grading contours on that building plan submittal are currently the only grading contours that have been approved by the City.

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

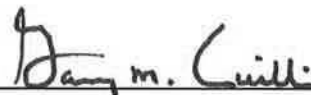
(8) This Appeal decision may be further appealed to the Yakima City Council within the time period and in the manner required by applicable City ordinance provisions.

**VII. Hearing Examiner's Appeal Decision (APP#001-21).** The Hearing Examiner's decision relative to this Appeal is as follows:

(1) The portion of the Administrative Official's administrative determination to the effect that the increase in the site grading elevation shown on the site plan for the modification application does not satisfy all of the criteria for approval of a Minor Modification is affirmed and the Appeal from that portion of the Minor Modification decision is denied.

(2) The portion of the Administrative Official's said decision which requires the applicant/appellant to regrade the site consistent with grading contours as shown in the building site plan submittal for B200126 is also affirmed subject to the right of the applicant/appellant set forth in YMC §15.17.020 and §15.17.040(C) to apply for a Type (3) Major Modification and/or the right of the applicant/appellant set forth in YMC §16.08.025 and §16.08.030 to appeal this decision to the Yakima City Council within fourteen days of mailing this decision in accordance with applicable City ordinance provisions.

**DATED** this 26<sup>th</sup> day of August, 2021.



**Gary M. Cuillier, Hearing Examiner**

**(MOD#021-21, APP#001-21)**

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### Appeal to City Council Applications

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## LAND USE APPLICATION

CITY OF YAKIMA, DEPARTMENT OF COMMUNITY DEVELOPMENT

129 NORTH SECOND STREET, 2ND FLOOR, YAKIMA, WA 98901

PHONE: (509) 575-6183 EMAIL: ask.planning@yakimawa.gov

## INSTRUCTIONS - PLEASE READ FIRST Please type or print your answers clearly.

Answer all questions completely. If you have any questions about this form or the application process, please ask a Planner. Remember to bring all necessary attachments and the required filing fee when the application is submitted. The Planning Division cannot accept an application unless it is complete and the filing fee paid. Filing fees are not refundable. This application consists of three parts. PART I - GENERAL INFORMATION AND PART III - CERTIFICATION are on this page. PART II contains additional information specific to your appeal and MUST be attached to this page to complete the application.

## PART I - GENERAL INFORMATION

1. Appellant's Information:	Name:	Dr. Peter Finch						
	Mailing Address:	8902 Zler Road						
	City:	Yakima	St:	WA	Zip:	98908	Phone:	( 509 ) 972-8007
	E-Mail:	finchp@wvwd208.org						

\*\*\*Any additional appellant parties may be listed on a separate page\*\*\*

2. Site Address of the Proposal Being Appealed: 7 N. 88th Ave., Yakima, WA

## PART II - SUPPLEMENTAL APPLICATION (SEE ATTACHED SHEET)

## PART III - CERTIFICATION

3. I certify that the information on this application and the required attachments are true and correct to the best of my knowledge.

  
Appellant's Signature9/9/21  
Date

FILE/APPLICATION(S)#:

APP# 008-21

DATE FEE PAID:	RECEIVED BY:	AMOUNT PAID:	RECEIPT NO:
9-10-21	Jose A	\$340.00	CR-21-002704

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CITY OF YAKIMA  
PLANNING DIV.



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
- ☐ Other: \_\_\_\_\_

#### 2. FILE NUMBER(S) OF PROPOSAL BEING APPEALED: APP#001-21, MOD#021-21

#### 3. DESCRIPTION OF ACTION BEING APPEALED:

The School District challenges the Hearing Examiner's August 26, 2021 decision in APP#001-21 to affirm the Administrative Official's partial denial of the School District's Modification Application in MOD#21-21. The Modification Application 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.

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CITY OF YAKIMA  
PLANNING DIV.

**BEFORE THE YAKIMA CITY COUNCIL**

In the matter of the Appeal 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.

APP#001-21, MOD#21-021

NOTICE OF APPEAL

West Valley School District No. 208 (the "School District") files this Notice of Appeal to the Yakima City Council ("City Council") for review of the City of Yakima Hearing Examiner's Decision, APP#001-21 ("Hearing Examiner Decision"), to uphold the Administrative Official's denial of the School District's Application for Modification, MOD#21-021 ("City Decision"). 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

NOTICE OF ADMINISTRATIVE APPEAL – 1

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DOC.  
INDEX  
#

SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV.

1 decision on the School District's Request for Modification. City Decision at 1. The City  
2 approved the walking path, revised backstop and goalpost locations, the reduction of asphalt  
3 for the playground, and the installation of site screening. City Decision at 1. However, the  
4 City denied the School District's request to approve the as-built grading on the basis that the  
5 as-built site grading shown in the modification application is in "excess of a 50% increase in  
6 elevation from what was shown with the B200126 submittal in several locations, not  
7 meeting the standard for a modification." City Decision at 1. Additionally, the City found  
8 that the increase in site grading "does create an adverse impact" because "the City received  
9 numerous phone calls and emails from adjacent property owners" about "its negative impact  
10 on adjacent property owners." City Decision at 6. The Hearing Examiner affirmed the  
11 City's decision, stating that the Administrative Official did not err in partially denying the  
12 modification application. Hearing Examiner Decision at 13.

21 2. Appellant West Valley School District No. 208 ("School District") is a  
22 public-school district operating in Yakima, Washington. Appellant's business address is  
23 8902 Zier Road, Yakima, Washington 98909.  
24

25 3. Attorneys for the Appellant are Kristine R. Wilson and Julie Wilson-  
26 McNeerney, Perkins Coie, 1201 Third Avenue, Seattle, Washington 98101-3099.  
27

28 4. Attached to this Notice of Appeal as Exhibit A is the originally appealed-  
29 from decision of the Administrative Official ("City Decision"), dated June 30, 2021 and as  
30 Exhibit B, is the Hearing Examiner's Decision, dated August 26, 2021, that is the subject of  
31 this appeal (the "Hearing Examiner's Decision"). Attached as Exhibit C is a statement from  
32 the appellant in accordance with Yakima Municipal Code ("YMC") 16.08.025.A.3.  
33

34 5. Appellant has standing to initiate this appeal as a party of record per YMC  
35 16.08.025.A. Appellant in this matter is the applicant whose modification request was  
36 denied by the City of Yakima ("City") and who now is appealing the Hearing Examiner's  
37 decision to affirm the City's denial of the School District's modification request.  
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INDEX

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CITY OF YAKIMA  
PLANNING DIV.

1           6. Appellant is appealing the Hearing Examiner's Decision on the grounds that  
2 the Hearing Examiner exceeded his authority in issuing the Decision; the Hearing Examiner  
3 committed errors of law; and the findings, conclusions or decision prepared by the Hearing  
4 Examiner are not supported by substantial evidence in the following respects:  
5  
6

7           a. The Hearing Examiner committed an error of law by finding that the  
8 Administrative Official correctly applied by analogy YMC 15.17.020.C's criteria to the  
9 School District's request that the City approve the as-built site grading. Hearing Examiner  
10 Decision at 7. YMC 15.17.020.C allows the City to approve as a Minor Modification any  
11 expansion of use area or a structure not exceeding 50% of the gross floor area. YMC  
12 15.17.020.C does not speak to changes in site elevation. The Hearing Examiner also erred  
13 in finding that the City's interpretation of YMC 15.17.020.C did not prejudice the School  
14 District.  
15  
16

17           b. The Hearing Examiner's finding that the Administrative Official was justified  
18 in her site elevation increase calculations—wherein the Administrative Official considered  
19 only the increased elevations at the playfields rather than the average increase in elevation  
20 across the site as a whole—is not supported by substantial evidence. Hearing Examiner  
21 Decision at 8-9. The uncontroverted evidence in the record demonstrates that the average  
22 increase in grade is only 32% across the entire site from the permit set to the as-built  
23 conditions. The School District's use of the average increase in elevation across the site as a  
24 whole is consistent with YMC 15.17.020. The Hearing Examiner committed an error of law  
25 in upholding the Administrative Official's application by analogy of YMC 15.17.020.C to  
26 only those areas of the site that pertained to the adverse impacts reported by neighbors.  
27 Hearing Examiner Decision at 9. The Hearing Examiner also erred in finding that the City's  
28 calculation of the site elevation increase did not prejudice the School District.  
29  
30

31           c. The Hearing Examiner's Decision to uphold the Administrative Official's  
32 finding that the as-built grading would cause an adverse effect is not supported by  
33 substantial evidence. The City's record consistently demonstrates that the site grading  
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NOTICE OF APPEAL – 3

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INDEX  
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SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV.

1 would not have an adverse effect and that the grading met code requirements. YMC  
2  
3 11.04.010 adopts Appendix J of the 2018 Washington State Building Code. Sections J108.3  
4 and J109.4 of the Washington State Building Code indicate that “adverse effects” to  
5 adjacent properties include only slope stability, drainage, and potential erosion problems  
6 resulting from the grading. Yet, the City’s only stated basis for denying the School  
7 District’s modification request—and the Hearing Examiner’s basis for affirming the  
8 Administrative Official’s finding—was neighbors’ concerns regarding the aesthetic and  
9 visual impacts of the higher playfield elevation on their adjacent properties. *See* Hearing  
10 Examiner Decision at 10. But impacts to aesthetics and visual quality are an improper basis  
11 to support an “adverse effects” finding pursuant to the Washington State Building Code. By  
12 upholding the Administrative Official’s finding on the basis of the neighbor’s aesthetics and  
13 visual concerns, the Hearing Examiner improperly applied a higher standard to the School  
14 District’s modification request than would have been applied to a grading permit for the  
15 same work. The City’s record shows that grading would not have adverse effects based on  
16 the environmental review, and the City’s surface water engineer’s analysis shows that the  
17 site does not create any site stability, erosion, or drainage impacts to adjacent properties.  
18 Because there are no slope stability or erosion concerns resulting from the increased  
19 playfield elevation, the Hearing Examiner’s determination that the grading would result in  
20 adverse effects is not supported by substantial evidence.

21  
22 d. The Hearing Examiner committed an error of law in affirming the  
23 Administrative Official’s application of a higher standard to the denial of the grading  
24 modification than would have been applied to the initial grading permit review.

25  
26 e. The Hearing Examiner committed an error of law and exceeded his authority  
27 in holding that the School District must either successfully appeal the Administrative Minor  
28 Modification decision, or successfully obtain approval of the grading increase through a  
29 Type (3) review process. Hearing Examiner Decision at 12. The School District went  
30 through the Type (3) review process for the demolition and elementary school rebuilding  
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DOC.  
INDEX

# BB-1

SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV.

project, as this proposed use triggers a Type (3) review process. *See* YMC 15.15.020. Mere changes in site elevation should not require a whole new Type (3) review process and a separate approval on the same scale as the entire school rebuilding project.

f. The Hearing Examiner committed an error of law and exceeded his authority in affirming the Administrative Official's determination that the School District may be required to regrade the site. Hearing Examiner Decision at 12-13. The Hearing Examiner held that the "nexus and proportionality test" does not apply here because the Administrative Official's decision "leaves unaffected the grading contour requirements of the approved 2020 building permit which was not appealed and which will remain as the grading contour requirements for the site." Hearing Examiner Decision at 13. However, the Hearing Examiner failed to consider the significant adverse effect on the School District, the taxpayers, and the elementary school students by requiring the School District to regrade the site consistent with the approved 2020 building permit grading plans. By so holding, the Hearing Examiner (and the Administrative Official) deemed that the handful of neighbors' aesthetic concerns trump the exorbitant cost of regrading the site both to the School District and to the City taxpayers. Accordingly, the imposition of a requirement to regrade the site is contrary to the nexus and proportionality test. The City may only impose requirements that are proportionate to the impacts of the proposed action. Therefore, the Hearing Examiner and Administrative Official lack authority to require the school district to regrade the site.

7. Appellant seeks the following relief from the City Council:

- a. For an Order reversing the Hearing Examiner's decision with respect to grading.
- b. For such other and further relief as the City Council deems just and equitable.

NOTICE OF APPEAL – 5

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INDEX

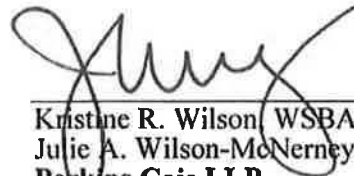
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DATED: September 10, 2021



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*

NOTICE OF APPEAL – 6

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INDEX**

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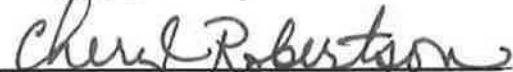
**CERTIFICATE OF SERVICE**

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 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 10th day of September, 2021 at Seattle, Washington.

  
Cheryl Robertson, Legal Practice  
Assistant

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# EXHIBIT A

DOC.  
INDEX

# BB-1

SEP 10 2021

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PLANNING DIV.

DEPARTMENT OF COMMUNITY DEVELOPMENT  
Joan Davenport, AICP, Director

Planning Division  
Joseph Calhoun, Manager  
129 North Second Street, 2<sup>nd</sup> Floor, Yakima, WA 98901  
ask.planning@yakimawa.gov · www.yakimawa.gov/services/planning

## CITY OF YAKIMA

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

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

DOC.  
INDEX

# BB-1



SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV.**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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CITY OF YAKIMA  
PLANNING DIV.

- 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.

**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.

SEP 10 2021

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:
- 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.
  - All lead and arsenic contaminated soil was removed from stormwater infiltration areas.
  - 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.
  - Lead and arsenic contaminated soil remaining grass or landscaping areas is currently being covered with an orange geotextile fabric and clean soil.
  - 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.

SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV.

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.

SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV

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.

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

7. The modification does not include hazardous materials.

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*

SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV.

*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.*

*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.

West Valley School District / Apple Valley Elementary  
MOD#021-21

DOC.  
INDEX

# BB-1

RECEIVED

SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV.

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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**SEP 10 2021**

**CITY OF YAKIMA  
PLANNING DIV.**

## **EXHIBIT B**

**DOC.  
INDEX  
# BB-1**



DEPARTMENT OF COMMUNITY DEVELOPMENT

Joan Davenport, AICP, Director

Planning Division

Joseph Calhoun, Manager

129 North Second Street, 2<sup>nd</sup> Floor, Yakima, WA 98901

ask.planning@yakimawa.gov · www.yakimawa.gov/services/planning

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SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV

**NOTIFICATION OF HEARING EXAMINER'S DECISION**

**DATE:** August 27, 2021  
**TO:** Applicant, Appellant, SEPA Agencies, Adjoining Property Owners & Parties of Record  
**SUBJECT:** Notice of the Hearing Examiner's Decision  
**FILE #(S):** APP#001-21, MOD#021-21  
**APPLICANT:** West Valley School District/Apple Valley Elementary School  
**APPELLANT:** West Valley School District  
**PROJECT LOCATION:** 7 N. 88<sup>th</sup> Ave.

On August 26, 2021, the City of Yakima Hearing Examiner rendered his decision on **APP#001-21**, an appeal of the Administrative Official's Decision for MOD#021-21, a modification to an existing site plan at Apple Valley Elementary in the R-1 zoning district. Enclosed is a copy of the Hearing Examiner's Decision. The appellant may apply for a Type(3) Major Modification and/or has the right as set forth in YMC 16.08.025 and YMC 16.08.030 to appeal this decision to the Yakima City Council within fourteen days of mailing this decision in accordance with the applicable City provisions.

For further information or assistance, you may contact Associate Planner Eric Crowell at (509) 575-6736 or email to: [eric.crowell@yakimawa.gov](mailto:eric.crowell@yakimawa.gov).

*Eric M. Crowell*

Eric Crowell  
Associate Planner

Date of Mailing: August 27, 2021  
Enclosures: Hearing Examiner's Decision



DOC.  
INDEX

# BB-1

RECEIVED

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

**City of Yakima, Washington  
Hearing Examiner's Decision**

August 26, 2021

RECEIVED

SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV.

**In the Matter of an Appeal by the )  
West Valley School District of an )  
Administrative Official's Decision )  
Regarding One of Five Requests )  
For a Minor Modification to the )  
City's Approved Site Plan for the )  
Apple Valley Elementary School )**

**APP#001-21  
MOD#021-21**

**A. Introduction.** The main procedural aspects of the open record public hearing that was conducted by the Hearing Examiner on August 12, 2021, may be summarized as follows:

(1) The Administrative Official, City of Yakima Community Development Director Joan Davenport, issued a decision on June 30, 2021, relative to a request for the Minor Modification of the site plan previously approved for the Apple Valley Elementary School. The decision approved as a Minor Modification 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 sight-screening in some locations which were four of the modified features shown on the revised site plans submitted on June 21 and June 23, 2021 (*Document Index B-3 and G-3*). The decision did not approve as a Minor Modification the increase in elevation of grading contours of portions of the site beyond what the City had previously approved for building permit B200126 in 2020. That denial was based on a finding that the increase in site grading elevation creates an adverse impact of the project (*Document Index E-3 and G-4*).

(2) A courtesy copy of the Administrative Official's decision was sent to

West Valley School District  
Modification Appeal Decision  
Apple Valley Elementary School  
APP#001-21 of MOD#021-21

1

DOC.  
INDEX  
# BB-1

RECEIVED

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

RECEIVED

SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV

adjacent property owners who had emailed concerns to the City about the increase in elevation of the site (*Testimony of Joan Davenport*). A section at the end of the decision entitled "APPEAL" set forth instructions as to how decisions by the Planning Division regarding approval or denial of administrative modifications may be appealed within fourteen days. West Valley School District (hereafter "WVSD") appealed the Administrative Official's denial of the increase in the site grading elevation of the playgrounds and playfields as a Minor Modification. There is no indication in the record that anyone appealed the changes that were approved as part of the Minor Modification request. If those aspects of the Minor Modification were appealed, they were not included within this Appeal proceeding and are not before the Hearing Examiner as part of this Appeal.

(3) Testimony of City Associate Planner Eric Crowell recommended that the Appeal be denied and that the Administrative Official's failure to approve the requested increase in the site grading elevation of portions of the site as a Minor Modification of the approved site plan be affirmed for reasons set forth in his staff report (*Document Index A-1*). Testimony in favor of denial of the Appeal and affirmance of the Administrative Official's decision was also presented by City Attorney Sara Watkins; by Community Development Director Joan Davenport; and by adjacent property owner John Manfredi.

(4) Testimony in favor of the Appeal to authorize the increase in the site grading elevation of portions of the site as a Minor Modification was submitted by appellant's attorney Julie A. Wilson-McNerney of the law firm of Perkins Coie LLP; by the Project Architect at Design West Architects, Matthew Whitish, AIA; by the Bond Oversight Committee Chairman, Peter Marinace; and by a parent of two Apple Valley Elementary School students, Chris Jevne.

(5) Written comments in favor of the Appeal seeking approval of the requested increase in the site grading elevation of portions of the site as a Minor Modification were submitted by appellant's attorneys, Kristine R. Wilson and Julie A. Wilson-McNerney of Perkins Coie LLP (*Document Index D-1, G-2, H-5 and H-6*); by appellant's Acting Superintendent of Schools, Dr. Peter Finch (*Document Index D-1*); by a commenter who described herself as a taxpayer, Michelle Mueller (*Document Index F-2*); by a parent of an Apple Valley Elementary School student, Jamie Mathews (*Document Index H-1*); by a West Valley resident, Ryan K. Mathews (*Document Index H-3*); by a resident living across Barge Street north of the school, Oscar Rodriguez (*Document Index H-7*); and by the Bond Oversight

RECEIVED

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

Committee Chairman, Peter Marinace (*Document Index H-8*).

(6) Written comments in opposition to the Appeal and in favor of affirming the Administrative Official's decision were submitted by Associate Planner Eric Crowell (*Document Index A-1*); by Administrative Official Joan Davenport (*Document Index H-4*); by adjacent resident Julia Ericson (*Document Index F-1*); by adjacent resident Stuart McCurdy (*Document Index F-3*); by adjacent residents Kevin and Melanie Cox (*Document Index F-4*); by adjacent residents John and Candace Manfredi (*Document Index F-5 and H-2*); by adjacent resident Thela McCurdy (*Document Index F-6*); and by adjacent residents Erasmo and Lorena Carranza (*Document Index F-7*).

(7) Extensive written, photographic, illustrative and oral evidence was presented in this matter. Any attempt to summarize the evidence that was relative to the grounds set forth for this Appeal could not as a practical matter include all of the many points in their context that were submitted as evidence, but anyone interested in reviewing all of the evidence in its full context may do so by reviewing the documents submitted for this record and by viewing the hearing on the City's website entitled "yakimawa.gov" by clicking on "City Council" and then on "City Council Videos" and then on "City of Yakima Hearing Examiner 8/12/2021." The Hearing Examiner has more than once reviewed all of the written, photographic and illustrative evidence, as well as all of the testimonial evidence presented at the hearing. The following Findings, Conclusions and Decision are the result from that review and consideration of all of the evidence in the record and presented at the hearing which pertains to the stated grounds for this Appeal. These Findings, Conclusions and Decision have been issued within ten working days of the date of the open record public hearing as required by Subsections 16.08.018(G) and 16.08.020(C) of the Yakima Municipal Code (YMC).

**B. Basis for Decision.** Based upon the Hearing Examiner's view of the site on August 10, 2021, without anyone else present; his consideration of the staff report, the appeal information, the exhibits, the testimony and other evidence presented at the open record public hearing on August 12, 2021; and his consideration of the provisions of the City's Zoning Ordinance, Title 15 of the Yakima Municipal Code

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SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV

RECEIVED

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

(YMC), which apply to the Appellant's grounds for appeal; the Hearing Examiner makes and issues the following Findings, Conclusions and Decision:

## **FINDINGS**

**I. Background of Appeal.** The background facts pertinent to this appeal may be summarized as follows:

(1) When the City investigated a complaint regarding the construction of a walking pathway at Apple Valley Elementary School, it found that the school and parking areas had been constructed in accordance with the site plan that was approved on April 7, 2020 for the building permit (B200126), but it was determined that the playground areas, fields and pathway were in some areas one to three feet higher than shown on the approved site plan. A stop work order was placed on the playground and playfield portions of the project on May 26, 2021. WVSD applied for a modification of the approved site plan on May 28, 2021 which would add the pathway that had been constructed around the south and east perimeter of the school site. The City recommended during a virtual meeting with WVSD on June 4, 2021 that WVSD meet with the concerned neighbors to hear their comments. After WVSD sent email notices to neighbors on June 8, 2021, it held a meeting with neighbors to hear their concerns on June 14, 2021. The City's Community Development Director who is the Administrative Official, Joan Davenport, attended that meeting and heard neighborhood concerns, including concerns about the increase in the site grading elevation of portions of the playground and playfields at issue in this Appeal. She also visited the school campus. On June 21, 2021, an amended application was submitted to also modify backstop and goalpost locations for the playfields, to slightly reduce the asphalt area for the playground, to change some of the fencing and to allow the grading of the playfields to remain at the as-built elevations rather than at the previously approved elevations. The City Planning Division determined that the application was complete and the Administrative Official issued the decision relative thereto on June 30, 2021 (*Document Index H-4 and E-3*).

SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV.

RECEIVED

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

(2) The decision approved as a Minor Modification the five-foot-wide walking path around the perimeter of the playfields, the revised backstop and goalpost locations, the reduction in asphalt for the playground, and the installation of sitescreening, but it did not approve as a Minor Modification the as-built increase in the site grading elevation of portions of the playground and playfield areas of the site.

(3) West Valley School District timely appealed the latter aspect of the Minor Modification decision on July 14, 2021. Public notice of the Appeal hearing set for August 12, 2021 was given by mailing notice to the parties of record and the applicant/appellant on July 23, 2021, as well as by publishing notice in the Yakima Herald-Republic on July 23, 2021 and posting land use action signs on the site on August 2, 2021 in accordance with YMC §16.08.018(D). The Hearing Examiner conducted the open record public hearing pursuant to the jurisdiction conferred by YMC §15.20.040(C)(1)(f) and §16.08.018(G).

(4) YMC §15.17.020 states that minor changes to approved Class (1), (2) or (3) uses may qualify for abbreviated review if they do not exceed certain listed criteria consisting of seven types of limitations on the nature of the change. The limitation prescribed by YMC §15.17.020(C) is that any expansion of use area or structure will not exceed 50% of the gross floor area. YMC §15.17.040(B)(1) provides that applications for modifications may be summarily and administratively reviewed by using the Type (1) review process plus the additional consideration of three specified criteria. The third criterion in YMC §15.17.040(B)(1)(c) is that the proposed change in the site design or arrangement, in the determination of the planning division, will not create or materially increase any adverse impacts or undesirable effects of the project.

(5) YMC §15.17.040(C) provides that if in utilizing the Type (1) review process the proposed modification does not meet all of the requirements of section 15.17.040, it shall be denied and may be the subject of an application for review under the normal review provisions for the use. The normal review provisions for this use would be the Type (3) review provisions for elementary school uses in the Single-Family Residential (R-1) zoning district. Besides requiring public notice and an open record public hearing by the Hearing Examiner, Type (3) review of Class (3) uses defined in YMC §15.02.020 also requires the consideration of several criteria such as compatibility with the neighborhood and authorizes the imposition of conditions if they would adequately resolve difficulties related to compatibility.

RECEIVED

SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV.

RECEIVED

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

Such alternatives are not available in the abbreviated, summary, administrative Type (1) Minor Modification process which according to YMC §15.17.040(C) must result in either approval or denial of the requested change. YMC §15.17.020 likewise provides that denial of requested changes under the abbreviated Type (1) Minor Modification procedure that do not meet the criteria must apply for review as a Class (1), (2) or (3) use or development.

(5) YMC §16.08.018(A) provides that an Administrative Official's decision may be appealed to the Hearing Examiner. YMC §16.08.018(C) states that all appeals shall specifically cite the action being appealed, the error(s) or issue(s) to be considered, and explain why the action is not consistent with the provisions of the Yakima urban area comprehensive plan, this title or other provisions of law. YMC §16.08.018(G) requires that testimony given during the appeal shall be limited to those points cited in the appeal application. YMC §16.08.020(A) provides that the Hearing Examiner shall hear appeals de novo which means that open record appeal hearings shall be conducted. YMC §16.08.014 states that the appellant shall bear the burden to demonstrate that there is at least one of four specified types of error in the decision of the Administrative Official. YMC §16.08.018(H) provides that decisions by the Hearing Examiner shall be final and conclusive unless appealed to the Yakima City Council in accordance with YMC §16.08.020(C), §16.08.025 and §16.08.030 which would result in a stay of actions of the Administrative Official in accordance with YMC §16.08.050.

**II. The Hearing Examiner's Findings as to the Appellant's First Ground for the Appeal to the Effect that the Administrative Official Committed an Error of Law in Partially Denying the Modification Application.**

(1) The appellant correctly points out that YMC §15.17.020(C) which allows any expansion of use area and structure not exceeding fifty percent of the gross floor area to be considered as a Minor Modification if it satisfies the additional criteria in YMC §15.17.040 is inapplicable to increases in site grading elevation even though grading is specifically included in the definition of a "use" in YMC §15.02.020. This contention is supported by the definition of "gross floor area" in YMC §15.02.020 and YMC §15.06.040(A). Gross floor area is defined as the total square

RECEIVED

SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV.

RECEIVED

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

footage of all floors in a structure which is to be determined in a specified manner and which can only be applied to an increase in the site grading elevation of a use area by analogy.

(2) The Administrative Official did in fact apply the potential type of Minor Modification described in YMC §15.17.020(C) by analogy for evaluation purposes to the appellant's requested increase in the site grading elevation of the site. She applied that provision to individual elevation increases in any of the contours that were compared rather than to the average percentage increase in elevation over the entire site (*Document Index A-1, page 2 of the staff report*). The Planning Division's interpretation of that provision to allow consideration of some grading changes by analogy to constitute Minor Modifications if they also meet the additional criteria in YMC §15.17.040 was at most harmless error.

(3) The Administrative Official's interpretation of YMC 15.17.020(C) did not prejudice the appellant. That is because the appellant's requested increase in site grading elevation could not otherwise be considered as a Minor Modification under any circumstances absent the use of that provision by analogy. The appellant could not point to any ordinance provision specifying how a percentage increase in grading elevation is to be determined by analogy. Applying YMC §15.17.020(C) to this situation by analogy also did not prejudice the appellant because the Administrative Official also went further and also considered the requested modification under the additional criteria of YMC §15.17.040. Consideration of the requested modification under the additional criterion of YMC 15.17.040(B)(1)(c) resulted in a determination that "The proposed increase in site grading elevation does create an adverse impact of the project" (*Document Index E-3 and G-4, page 6 of the decision*).

**III. The Hearing Examiner's Findings as to the Appellant's Second Ground for the Appeal to the Effect that the Administrative Official's Finding that the As-Built Grading Would Be More Than a 50% Increase in Elevation is Not Supported by Substantial Evidence.**

RECEIVED

SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV.

RECEIVED

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

(1) The appellant correctly described “substantial evidence” as “evidence of a sufficient quantity to persuade a reasonable person that the declared premise is true.” Some cases refer to the fictitious person being persuaded as a “fair-minded person.” *E.g. Ostrum Mushroom Farm Co. v. Wash. State Dep’t of Labor and Industries*, 13 Wn.App.2d 262, 271, 463 P.3d 149, 154 (2020).

(2) The appellant’s uncontradicted evidence was to the effect that the average increase in the as-built site grading elevation across the entire site is 32% rather than in excess of the 50% referenced in YMC §15.17.020(C). That is because portions of the southern playfield were graded at an elevation one to three feet higher than approved by the City in 2020, while the finished elevation in other areas of the site is one foot lower than shown in the approved site plans (*Document Index D-1, pages 9-10 of appellant’s memorandum*).

(3) The Administrative Official did not use the average increase in site grading elevation in determining that the increase in site grading elevation exceeded 50%. She rather determined that the elevation of any contour line on the site plan for the modification request which exceeded by more than 50% the elevation of the contour line it crossed on the site plan previously approved with building permit B200126 in fact by analogy violated the 50% limitation in YMC §15.17.020(C) required for administrative approval as a Minor Modification. (*Document Index A-1, page 3 of the staff report*).

(4) In this regard it is difficult to apply YMC §15.17.020(C) by analogy to an increase in the site grading elevation of a site because an increase in gross floor area would be determined by considering the total square footage increase in floor area in all applicable locations throughout a building without being an average increase or being an increase that is exceeded only in certain areas. Here the adverse impacts of the project cited by adjacent residents consist mainly of an increase in site grading elevation in the areas relatively near adjacent residences which diminish the effectiveness of their perimeter sitescreeening as a visual buffer between the school and their residential uses of different intensity contrary to YMC §15.07.010.

(5) Interpreting YMC §15.17.020(C) to mandate consideration of the average increase in the site grading elevation across the entire site would result in consideration of areas away from the adjacent neighbors that would not be relevant to their concerns and would ignore the full extent of any increases in the site grading

RECEIVED

SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV.

RECEIVED

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

elevation that are near enough to the adjacent neighbors to significantly diminish the effectiveness of their sitescreening. The Administrative Official's approach and determination as to the applicability by analogy for evaluation purposes of YMC §15.17.020(C) focused upon the adverse impacts reported by neighbors rather than upon the average increase in site elevation which was not the problem reported by the neighbors. Her determination is supported by substantial evidence in the record which consists of (i) the differences between the contour lines on the site plan submitted for the modification application and the contour lines on the site plan previously approved for the building permit and (ii) the written comments, photographs, illustrations and testimony of adjacent neighbors which have been submitted for the record of this de novo open record hearing appeal procedure.

(6) Even if the Administrative Official should have utilized the average increase in site grading elevation across the entire site, again any error was harmless. The failure of the increase in site grading elevation to satisfy the percentage limitation in YMC §15.17.020(C) was not the Administrative Official's only basis for refusing to approve the requested increase in the site grading elevation as a Minor Modification. A second and independent basis for refusing to summarily approve the increase in site grading elevation administratively as a Minor Modification was her determination that it creates an adverse impact of the project so as to be disqualified from approval as a Minor Modification under the third criterion prescribed by YMC §15.17.040(B)(1)(c) (*Document Index E-3 and G-4, page 6 of the decision*).

**IV. The Hearing Examiner's Findings as to the Appellant's Third Ground for the Appeal to the Effect that the Administrative Official's Finding that the As-Built Grading Would Cause an Adverse Effect is Not Supported by Substantial Evidence.**

(1) YMC §15.17.040(B) provides in part that applications for modifications may only be administratively and summarily reviewed using the Type (1) review process if in the determination of the Planning Division, it will not create or

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SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV.

RECEIVED

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

materially increase any adverse impacts or undesirable effects of the project. YMC §15.02.020 defines the Planning Division as the Department of Community Development of the City of Yakima and the Administrative Official as the duly appointed City of Yakima Director of Community Development. Here the Director of Community Development specifically determined that the site grading elevation does in fact create an adverse impact of the project that prevented it from being processed administratively by the summary Minor Modification process. Her specific determination in regard to the adverse impact of the site grading elevation was as follows:

“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.”

*(Document Index E-3 and G-4, page 6 of the decision).*

(2) The Administrative Official's determination relative to the Minor Modification requirement of YMC §15.17.040(B)(1)(c) was based upon her personal knowledge of neighbors' concerns relayed to the Planning Division by emails and phone calls and expressed at the neighborhood meeting held on June 14, 2021, which she attended. YMC §15.17.020 and §15.17.040(C) state that the effect of that determination is in this situation to require consideration of the requested modification of the site grading elevation by means of an application for Type (3) review rather than by means of the abbreviated, summary, administrative Type (1) Minor Modification review process.

(3) The appellant correctly points out that the City's Surface Water Engineer determined that the as-built conditions at the school would not cause erosion or drainage problems. That does not mean, however, that the increase in site grading elevation to a significantly higher elevation than what was approved would not create other problems. The most obvious adverse impact from such an increase in

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SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV

RECEIVED

AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

the site grading elevation is described in the Planning Division staff report as follows:

“Because the elevation changes by a few feet in some locations, this reduces the effectiveness of the view-obscuring sitescreening material the school district agreed to install upon an existing six-foot-tall fence.”

*(Document Index A-1, page 3 of the staff report).*

(4) The Administrative Official's decision approved the requested Minor Modification for six-foot-tall view-obscuring fencing along the south and southeast perimeter of the site. The Administrative Official's decision contains a reference to one of the purposes of sitescreening set forth in YMC §15.07.010. One of the purposes of sitescreening is to provide a visual buffer between uses of different intensity such as between school playgrounds/playfields and adjacent residences. *(Document Index E-3 and G-4, page 3).* Increases in site grading elevations can reduce the effectiveness of the six-foot-high view-obscuring fencing to varying degrees depending upon where those increases in elevation are located.

(5) Since YMC §16.08.020(A) provides that the Hearing Examiner shall hear appeals de novo at an open record hearing, the written comments, photographs, illustrations and testimony presented for the appeal must be considered in deciding whether there is substantial evidence in the record to support the Administrative Official's determination to the effect that the increase in site grading elevation creates an adverse impact of the project so as to preclude its administrative approval summarily as a Minor Modification. Additional evidence presented for the record of this proceeding relative to the adverse impacts of the increase in site grading elevation includes evidence to the effect that (i) the building permit approval included regrading the south and east playgrounds/playfields to raise their elevation from one to four feet over what existed at that time *(Document Index F-1 and F-5)* and (ii) the additional subsequent increase in the site grading elevation of three to four feet more only 20 to 40 feet from the south and east property lines is now enough for some of the adjacent residents to see people over a six-foot-high view-obscuring fence from the waist up and to allow people to see into their yards and windows so as to create adverse impacts to some of the adjacent residents' privacy, security, personal safety, property damage and/or property values *(Document Index F-1, F-3, F-4, F-5, F-6 and F-7).* The testimony presented at the hearing by an adjacent property owner was consistent with his written comments, and he again

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SEP 10 2021

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CITY OF YAKIMA  
PLANNING DIV.

indicated that the neighbors should be compensated for the adverse impacts to their property caused by the increase in the site grading elevation if that change is approved (*Testimony of John Manfredi; Document Index F-5*). The written evidence, photographs, illustrations and testimony in the record as to adverse impacts due to the increase in site grading elevation is not speculative because it is based on already as-built elevations rather than on possible future impacts of possible future elevations.

(6) The written comments and testimony of adjacent neighbors that were submitted for the record of this proceeding as Document Index F-1, F-3, F-4, F-5, F-6 and F-7 in and of themselves constitute substantial evidence supporting the determination of the Administrative Official to the effect that the increase in the site grading elevation of the site creates an adverse impact of the project. This determination under the plain language of YMC §15.17.040(B)(1)(c) is solely hers to make because this is an abbreviated, summary, administrative Minor Modification process. This Minor Modification process does not involve determinations as to credibility, compatibility or the imposition of conditions to resolve difficulties related to the compatibility of a proposal which are involved by definition per YMC §15.02.020 in the consideration of Class (3) uses by Type (3) review. The Minor Modification process is rather a summary process which must result in either approval or denial based in part upon a determination of the Planning Division. That determination here is supported by substantial evidence.

**V. The Hearing Examiner's Findings as to the Appellant's Fourth Ground for this Appeal to the Effect that the City Exceeded Its Authority in Requiring the School District to Regrade the Site.**

(1) The language of the Administrative Official's decision following her denial of the requested increase in site grading elevation as a Minor Modification accurately describes what will result if the applicant/appellant should fail to be successful in an appeal of the Administrative Minor Modification decision and/or should fail to obtain approval of the increase in the site grading elevation of the site through the Type (3) review process. Absent success in pursuing one or both of those alternatives set forth in YMC §16.08.025 and §16.08.030 and/or YMC

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§15.17.020 and §15.17.040(C), it is true that the applicant/appellant will be required to regrade the site consistent with grading contours shown on the elevation site plan submittal for B200126 because that is the most recent City approval of the grading contours of the site. If that becomes a requirement, the requirement would be attributable to the appellant's action in increasing site grading elevations of the site beyond what the City had approved rather than attributable to any action by the City.

(2) The nexus and proportionality test do not apply to this situation because the Administrative Official's decision does not require an exaction or any mitigation measures, but rather leaves unaffected the grading contour requirements of the approved 2020 building permit which was not appealed and which will remain as the grading contour requirements for the site if the Administrative Official's decision is not changed as a result of the appeal process and/or the Type (3) review process.

**VI. The Hearing Examiner's Conclusions as to the Appellant's Grounds for this Appeal.**

(1) The Administrative Official did not commit an error of law in partially denying the modification application.

(2) The Administrative Official's finding that the as-built grading would be more than a 50% increase in elevation at some places on the site where contour lines of the site plan submitted with the modification application cross contour lines of the site plan approved for building permit B200126 is supported by substantial evidence.

(3) The Administrative Official's finding to the effect that the increase in the site grading elevation creates an adverse impact of the project is supported by substantial written, photographic, illustrative and oral evidence which is contained within the record of this proceeding.

(4) The City did not exceed its authority in requiring the School District to regrade the site because that is already required by the approved building permit site plan for B200126 which was not appealed. It is not a new requirement imposed by the Administrative Official. It is rather an existing building permit requirement that

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PLANNING DIV

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CITY OF YAKIMA  
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could still be eliminated by a successful appeal of the Administrative Official's decision or could still be eliminated or modified through Type (3) review.

(5) Due to the summary nature of the Minor Modification process, the written and oral evidence submitted at the hearing in favor of approving the Minor Modification which has all been reviewed and considered by the Hearing Examiner cannot here result in a reversal of the Administrative Official's decision because it fails to satisfy the appellant's burden to prove at least one of the four specific grounds required for a successful Appeal of a Minor Modification even though it may be persuasive in other contexts.

(6) The consequence of a failure to satisfy all of the criteria for a Minor Modification is that the applicant/appellant can apply for Type (3) review of the modification request for an increase in the site grading elevation of the site. That type of review would involve notice and a public hearing before the Hearing Examiner or Pro Tem Hearing Examiner. During that type of review, the written comments and testimony of those in favor of the modification of the site grading elevation that were presented for this Appeal, as well as additional written comments and testimony, could be presented and be considered under different criteria than are required for the administrative approval of a Minor Modification. If this modification request is set for a Type (3) review hearing in the future, the Planning Division may consider assigning that review to the Pro Tem Hearing Examiner since a third review of the site features for this new school could involve argument as to the intent and effect of this Hearing Examiner's two prior decisions in that regard which in turn might give rise to the need to address an appearance of fairness assertion or issue that could possibly be raised at the beginning of a future hearing.

(7) If the appellant applies for Type (3) review of the requested increase in the site grading elevation of the site and/or appeals this decision within the requisite fourteen days of mailing this decision, then the increase in site grading elevation will not immediately become a code compliance issue due to the stay prescribed by YMC §16.08.050. But otherwise the Administrative Official's requirement to regrade the site consistent with grading contours shown in the building plan submittal for B200126 will become a code compliance issue since the grading contours on that building plan submittal are currently the only grading contours that have been approved by the City.

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AUG 26 2021

CITY OF YAKIMA  
PLANNING DIV.

CITY OF YAKIMA  
PLANNING DIV.

(8) This Appeal decision may be further appealed to the Yakima City Council within the time period and in the manner required by applicable City ordinance provisions.

**VII. Hearing Examiner's Appeal Decision (APP#001-21).** The Hearing Examiner's decision relative to this Appeal is as follows:

(1) The portion of the Administrative Official's administrative determination to the effect that the increase in the site grading elevation shown on the site plan for the modification application does not satisfy all of the criteria for approval of a Minor Modification is affirmed and the Appeal from that portion of the Minor Modification decision is denied.

(2) The portion of the Administrative Official's said decision which requires the applicant/appellant to regrade the site consistent with grading contours as shown in the building site plan submittal for B200126 is also affirmed subject to the right of the applicant/appellant set forth in YMC §15.17.020 and §15.17.040(C) to apply for a Type (3) Major Modification and/or the right of the applicant/appellant set forth in YMC §16.08.025 and §16.08.030 to appeal this decision to the Yakima City Council within fourteen days of mailing this decision in accordance with applicable City ordinance provisions.

**DATED** this 26<sup>th</sup> day of August, 2021.

  
\_\_\_\_\_  
Gary M. Cuillier, Hearing Examiner

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SEP 10 2021

**CITY OF YAKIMA  
PLANNING DIV.**

# **EXHIBIT C**

**DOC.  
INDEX  
# BB-1**

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SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV.

BEFORE THE CITY OF YAKIMA CITY COUNCIL

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.

APP#001-21, 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 Superintendent of Schools for the West Valley School  
District. I previously served as an Assistant Superintendent at the West Valley School  
District from 2001 until 2021.

DECLARATION OF DR. PETER FINCH – 1

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DOC.  
INDEX

# BB-1

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SEP 10 2021

CITY OF YAKIMA  
PLANNING DIV

1           3.       I have read the West Valley School District's appeal of the Hearing  
2  
3 Examiner's August 26, 2021 decision in APP#001-21, which affirms the Administrative  
4  
5 Official's partial denial of MOD#021-21, and I believe the contents of the appeal to be true.  
6

7           I declare that the foregoing is true and correct to the best of my knowledge and  
8  
9 subject to the penalty of perjury under the laws of the state of Washington.  
10

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13           Dated this 10th day of September, 2021, at Yakima, Washington.  
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23           Dr. Peter Finch, Superintendent  
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DECLARATION OF DR. PETER FINCH – 2

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INDEX

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PLANNING DIV.

**CERTIFICATE OF SERVICE**

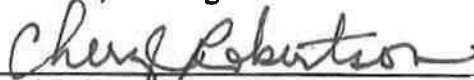
I certify under penalty of perjury under the laws of the State of Washington that on the date indicated below, I caused a true and correct copy of the foregoing

**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 10th day of September, 2021 at Seattle, Washington.

  
Cheryl Robertson, Legal Practice  
Assistant

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DOC.  
INDEX

# BB-1

**Y SCHOOL DISTRICT / APPLE VALLEY  
ELEMENTARY  
APP#008-21  
(MOD#021-21, APP#001-21)**

## EXHIBIT LIST

## **CHAPTER CC**

### **Appeal Responses & Appellant Rebuttal**

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CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

**BEFORE THE CITY OF YAKIMA CITY COUNCIL**

In the matter of the Appeal 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.

APP#001-21, MOD#021-21

APPELLANT'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF APPEAL

West Valley School District No. 208 (the "School District") submits the following Memorandum of Points and Authorities in support of its above-captioned Administrative Appeal to the Yakima City Council ("City Council"). The School District challenges the City of Yakima Hearing Examiner's Decision, APP#001-21 ("Hearing Examiner's Decision" or "Decision") to uphold the Administrative Official's denial of the School District's Application for Modification, MOD#21-021 ("City Decision"), which requested approval of as-built elevations for the replacement of Apple Valley Elementary School that are a 32% increase over the elevations the City of Yakima ("City") approved as part of the

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF NOTICE  
OF ADMINISTRATIVE APPEAL – 1

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INDEX

CC-2

OCT 15 2021

CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

1 School District's building permit. The Decision is clearly erroneous, inconsistent with  
2 applicable law, not supported by substantial evidence, and exceeded the Hearing Examiner's  
3 authority. The Hearing Examiner erred in upholding the City's application by analogy of a  
4 modification standard pertaining to gross floor area to an elevation change to find that the  
5 School District's request did not meet the criteria for a modification. Furthermore, the  
6 Hearing Examiner's findings that the elevation changes constitute a more than 50% increase  
7 over the previously approved plans and that the grading change would cause an adverse  
8 effect to adjacent property owners are not supported by substantial evidence. The Hearing  
9 Examiner also committed an error of law by affirming the City's misapplication of the law  
10 by holding the modification request to a higher standard than the initial grading permit.  
11 Finally, the Hearing Examiner committed an error of law and exceeded his authority in  
12 holding that the School District must regrade the site unless the School District either  
13 successfully appeals the Administrative Minor Modification Decision or successfully  
14 obtains approval of the grading increase through a Type (3) review process. The School  
15 District requests that the City Council reverse the Hearing Examiner's Decision with respect  
16 to grading.

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33 **I. EVIDENCE RELIED UPON**

34 In support of its appeal, the District relies upon all the documents filed with the City  
35 of Yakima in the records for File Nos. APP#001-21 and MOD#021-21.

36  
37  
38  
39 **II. RELIEF REQUESTED**

40 Consistent with YMC 16.08.014 and 16.08.030.F, the School District requests that  
41 the Hearing Examiner's Decision with respect to grading be reversed because the Decision  
42 is clearly erroneous, inconsistent with applicable law, not supported by substantial evidence,  
43 and exceeded the Hearing Examiner's authority.  
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MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF NOTICE OF  
APPEAL – 2

153676057.3

DOC.  
INDEX  
# CG-2

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OCT 15 2021

CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

### III. STANDARD OF REVIEW

The City Council reviews appeals of a Hearing Examiner's decision as a closed record appeal based upon the material in the record before the Hearing Examiner; no new evidence is presented. YMC 16.08.030.D. The City Council may "affirm the decision of the examiner, remand the matter back to the hearing examiner with appropriate directions, or may reverse or modify the hearing examiner's decision." YMC 16.08.030.F. To meet its burden of proof, the Appellant must demonstrate at least one of the following:

1. The decision-maker . . . exceeded his or her jurisdiction or authority;
2. The decision-maker failed to follow applicable procedures in reaching the decision;
3. The decision-maker committed an error of law; and/or
4. The findings, conclusions or decision prepared by the decision-maker are not supported by substantial evidence.

YMC 16.08.014.

### IV. FACTUAL BACKGROUND

#### A. The Project

In February 2019, voters in the School District's boundaries approved a \$59 million bond to replace Apple Valley and Summitview Elementary Schools to provide more capacity to reduce overcrowding. Declaration of Dr. Peter Finch, filed on July 14, 2021 (hereinafter "Finch Decl."), ¶ 3. On October 23, 2019, the School District submitted a Class 3 Review application (CL3#010-19, VAR#004-19, ADJ#027-19, and CAO#027-19) to the City to completely replace the Apple Valley Elementary School on the same site.<sup>1</sup> *Id.* at ¶ 8,

<sup>1</sup> The permitting and SEPA process for the school replacement project was completed in two phases. In 2019, the City conducted an environmental review under the State Environmental Policy Act, Chapter 43.21C RCW ("SEPA") for the demolition of the existing school building and issued a

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF NOTICE OF  
APPEAL – 3

153676057.3

DOC.  
INDEX  
# CC-2

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OCT 15 2021

CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

1 Ex. A at 3. The School District proposed the construction of a new 60,000-square-foot  
2 elementary school building in the R-1 zoning district with 147 parking spaces, a playground,  
3 and two playfields. *Id.* The application included requests for a variance to exceed the  
4 building height limitation in this zoning district; a critical areas review due to the site being  
5 in a wellhead protection area; and an administrative adjustment to waive the site-screening  
6 requirement that would impose a 6-foot view-obscuring fence, installation of a digital sign  
7 and wall signs that are not otherwise allowed in residential zoning districts, and to adjust the  
8 maximum height for signs set back more than 15 feet from the right-of-way. *Id.* at 3-4. The  
9 City completed SEPA review for the school construction and issued a Determination of  
10 Non-Significance on January 22, 2020. *Id.* at 4. The SEPA checklist submitted for the  
11 project did not identify any environmental impacts associated with site grading. *Id.* at ¶ 10,  
12 Ex. C at Attachment 1. The Hearing Examiner approved this application with conditions on  
13 February 28, 2020. *Id.* at ¶ 8, Ex. A at 23-25.

26  
27 **B. The Permits and Permit Process**

28 On April 7, 2020, the City approved Building Permit B200126 and the associated  
29 plan set, which included an overall grading plan for the entire site. Finch Decl., ¶ 4. The  
30 2020 approved grading plan included proposed elevations for the southeastern corner of the  
31 site that ranged from 1266 feet above sea level (ASL) near the southern fenceline to 1276  
32 feet ASL at the playfield at the northeastern corner of the site. Finch Decl., ¶ 11, Ex. D.  
33 Throughout the course of the project, the School District worked with the Washington State  
34 Department of Ecology on contamination issues at the site and to implement a clean cap  
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44 Mitigated Determination of Non-Significance, which included mitigation measures related to  
45 removing contaminated building materials, conducting work under the Model Toxics Control Act to  
46 address contamination on the site prior to development, and compliance with Yakima Regional  
47 Clean Air Agency requirements. Finch Decl., ¶ 9, Ex. B at 6.

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF NOTICE OF  
APPEAL – 4

153676057.3

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DOC.  
INDEX  
# CC-2

OCT 15 2021

CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

1 over contaminated soil that would be protective of human health and the environment. City  
2 Decision at 3-4. When construction at the site was completed, the finished elevations at the  
3 site ranged from 1266 feet ASL near the southeastern fenceline to 1276 feet ASL at the  
4 northeastern corner of the site, but certain portions of the southern playfield were graded at  
5 an elevation 1 to 3 feet higher than approved by the City in 2020. Finch Decl., ¶¶ 11-12,  
6 Exs. D-E. However, the finished elevation in other areas of the site is 1 foot lower than  
7 shown in the approved plans. *Id.*

8  
9 In late May 2021, the School District submitted a Modification Application to the  
10 City in accordance with Chapter YMC 15.17 to add a 5-foot walking path around the  
11 perimeter of the playfields, to change the backstop and goal locations, to reduce the amount  
12 of asphalt in the playground, to approve the as-built increased site elevations that were a  
13 32% increase in elevation from the plan sets approved as part of the building permit, and to  
14 install site-screening in certain locations. City Decision at 1. The City would not deem the  
15 School District's application complete until the School District held a public meeting to  
16 obtain public comment on June 14, 2021. Finch Decl., ¶ 6. At the public meeting,  
17 neighbors expressed concerns about the height of the southern playfield and concerns that  
18 people using the playfields would be able to see into their backyards. Finch Decl., ¶ 7. In  
19 response to public comments, the School District included as part of its Modification  
20 Application the installation of view-obscuring material to a portion of the fencing along the  
21 east and southern property lines adjacent to the neighboring residences. City Decision at 6.

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41 **C. The City Decision**

42 On June 30, 2021, the City issued its decision on the School District's Request for  
43 Modification. City Decision at 1. The City approved the walking path, revised backstop  
44 and goalpost locations, the reduction of asphalt for the playground, and the installation of  
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MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF NOTICE OF  
APPEAL – 5

153676057.3

DOC.

INDEX

# CC-2

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OCT 15 2021

CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

1 site screening. City Decision at 1. However, the City denied the School District's request to  
2 approve the as-built grading on the basis that the final site grading shown in the modification  
3 application is in "excess of a 50% increase in elevation from what was shown with the  
4 B200126 submittal in several locations, not meeting the standard for a modification." City  
5 Decision at 1. Additionally, the City found that the increase in site grading "does create an  
6 adverse impact" because "the City received numerous phone calls and emails from adjacent  
7 property owners" about "its negative impact on adjacent property owners." City Decision at  
8 6.

9 The City's surface water engineer conducted a site visit at Apple Valley Elementary  
10 School while the City reviewed the Modification Application, after the final grading was in  
11 place, and following a period of rain. City Decision at 7. The surface water engineer noted  
12 no signs of erosion. City Decision at 7. The City's engineer also concluded that there  
13 would be no drainage impact on the surrounding properties from the paved path. *Id.*  
14 Indeed, the engineer noted that the

15 only possible scenario I could see there being any kind of  
16 drainage issue would be on the south side if the school  
17 overwatered with the sprinklers, and because the main grassy  
18 area is elevated, you could get runoff from the sloped grassy  
19 areas making its way to the perimeter. If that happened there  
20 is still a ten foot separation between the school's fence and the  
21 neighbor's fences. Much of the runoff would infiltrate into the  
22 ground in this area. This is assuming there would be some  
23 problem with the school irrigation and that is unlikely. Along  
24 the east side of the school there is a small gravel berm  
25 between the path and the fence which would help to contain  
26 any runoff that might get there. Again, I would not anticipate  
27 any issues there.

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MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF NOTICE OF  
APPEAL – 6

153676057.3

DOC.  
INDEX  
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OCT 15 2021

CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

1 *Id.* Despite the engineer's analysis, the City denied the School District's grading request  
2  
3 and required the School District to "regrade the site consistent with grading contours as  
4  
5 shown in the building plan submittal (B200126)." City Decision at 7.  
6

7 **D. The Hearing Examiner's Decision**  
8

9 The School District appealed the City Decision to the Hearing Examiner. An open  
10  
11 record public hearing of the appeal was held on August 12, 2021. Hearing Examiner's  
12  
13 Decision at 3. On August 26, 2021, the Hearing Examiner issued his Decision, which  
14  
15 upheld the City Decision. *Id.* at 15. Specifically, the Hearing Examiner affirmed the  
16  
17 Administrative Official's determination "that the increase in site grading elevation shown on  
18  
19 the site plan for the modification application does not satisfy all of the criteria for approval  
20  
21 of a Minor Modification" because drawing an analogy between the minor modification  
22  
23 provisions in the code applicable to increases in gross floor area of an entire building to  
24  
25 elevation changes in one particular area of a site constituted at most harmless error. *Id.* at 7-  
26  
27 9, 15. The Hearing Examiner also upheld the Administrative Official's finding that the  
28  
29 increased grading at the playfields would result in adverse impacts to the neighbors because  
30  
31 people on the playfields could look down into the neighbors' yards and windows. *Id.* at 11.  
32  
33 The Hearing Examiner also affirmed the Administrative Official's determination that the  
34  
35 School District would be required to "regrade the site consistent with grading contours as  
36  
37 shown in the [original] building site plan" subject to the School District's right to apply for a  
38  
39 Type (3) Major Modification and/or to appeal the decision to the City Council. *Id.* at 15.  
40

41 **E. School District's Cost to Comply**  
42

43 As Matt Whitish testified at the hearing, re-grading the elevated portion of the site as  
44  
45 the City is now requiring will result in a significant amount of re-work and additional costs.  
46  
47 To re-grade the site, clean topsoil will have to be removed and stockpiled. New irrigation

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF NOTICE OF  
APPEAL – 7

153676057.3

DOC.  
INDEX

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OCT 15 2021

CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

1 piping will have to be removed and replaced entirely. A layer of marker fabric is installed  
2  
3 under the clean topsoil to mark the separation between clean and contaminated soils. This  
4  
5 marker fabric will have to be removed and replaced entirely. Contaminated soil will then  
6  
7 need to be excavated and exported to a landfill. Completing this work with contaminated  
8  
9 soils cannot occur while children are occupying the school. Once the new subgrade is  
10  
11 established, new marker fabric and new irrigation will have to be installed. Finally, the  
12  
13 clean topsoil will need to be placed, as well as new sod. The School District's contractor  
14  
15 estimates that this work will cost the School District upwards of \$1 million.  
16

17 **V. LEGAL ARGUMENT**

18  
19 **A. The Hearing Examiner Committed an Error of Law in Affirming the**  
20 **Administrative Official's Denial of the Modification Application**

21  
22 The Hearing Examiner committed an error of law by finding that the Administrative  
23  
24 Official correctly applied by analogy YMC 15.17.020.C's criteria to the School District's  
25  
26 request that the City approve the as-built site grading and that at most, the Administrative  
27  
28 Official's application of the law was harmless error. *See* Hearing Examiner's Decision at 7.  
29  
30 YMC 15.17.020.C allows the City to approve as a Minor Modification any expansion of use  
31  
32 area or a structure not exceeding 50% of the gross floor area. YMC 15.17.020.C does not  
33  
34 speak to changes in site elevation.

35  
36 Under the City's process for modification applications, "minor changes to existing or  
37  
38 approved Class (1), (2) or (3) uses or development may qualify for abbreviated review"  
39  
40 under Chapter 15.17 YMC. YMC 15.17.020. A change may be approved through a  
41  
42 modification if, among other things,  
43

44 **C. Any expansion of use area or structure will not exceed**  
45 **fifty percent of the gross floor area. The expansion of an**  
46 **existing single-family home may exceed the fifty percent limit**  
47 **when all applicable setback and lot coverage standards are**

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF NOTICE OF  
APPEAL – 8

153676057.3

DOC.

INDEX

4 CC-2

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OCT 15 2021

CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

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

YMC 15.17.020.C. YMC 15.02.020 defines “use” to include “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.” Although grading is covered in the definition of a “use” under the code, YMC 15.17.020 focuses on “an expansion of use area” and whether that expansion exceeds 50% of the gross floor area.

In finding that the Administrative Official correctly applied YMC 15.17.020.C to deny the grading modification, the Hearing Examiner committed two errors of law. First, the Hearing Examiner concluded that YMC 15.17.020.C applied by analogy to the School District’s “requested increase in the site grading elevation of the site.” Hearing Examiner’s Decision at 7. However, this finding assumes that an increase in finished elevation is an “expansion of use area.” A minor change in grading elevation does not constitute an expansion of the grading area. The area re-graded as part of the project did not change and therefore was not expanded. And even if an increase in elevation were to fall within an “expansion of use area,” such an expansion is limited to no more than 50% of the gross floor area. Per YMC 15.02.020 and 15.06.040.A,

“gross floor area” means the total square footage of all floors in a structure as measured from the interior surface of each exterior wall of the structure and including halls, lobbies, enclosed porches and fully enclosed recreation areas and balconies, but excluding stairways, elevator shafts, attic space, mechanical rooms, restrooms, uncovered steps and fire escapes, private garages, carports and off-street parking and loading spaces. Storage areas are included in gross floor area.

Grading elevations do not fall within the definition of gross floor area. Yet, in upholding the City’s denial of the grading modification, the Hearing Examiner reasoned that the City

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF NOTICE OF  
APPEAL – 9

153676057.3

DOC.  
INDEX  
# CC-2

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OCT 15 2021

CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

1 correctly applied the 50% threshold in YMC 15.17.020.C to an increase in grading  
2 elevation, and as discussed in more detail below, correctly calculated the increase in grading  
3 elevation by focusing only on specific areas of the site that were the subject of the  
4 neighbors' complaints.  
5  
6  
7

8  
9 Second, the Hearing Examiner committed an error of law in upholding the  
10 Administrative Official's application by analogy of YMC 15.17.020.C to only those areas of  
11 the site that pertained to the adverse impacts reported by neighbors. Hearing Examiner's  
12 Decision at 9. The City reviewed individual elevation increases within new contour lines  
13 submitted with the Modification Application rather than the average percentage increase in  
14 grading over the entire site. Hearing Examiner's Decision at 7. Based on these individual  
15 elevation increases within the contours, the City concluded that those new contours "are in  
16 excess of a 50% increase in elevation from what was shown with the B200126 submittal in  
17 several locations, not meeting the standard for a modification." City Decision at 5. The  
18 Hearing Examiner held that the City's finding was justified because the neighbors' concerns  
19 regarding the increased elevation only applied to the portion of the school adjacent to their  
20 property, and in any event, even if the City had erred, such error was harmless. *Id.* at 7-9.  
21 However, as Mr. Whitish testified at the hearing, the City's errors in this case are not  
22 harmless—the School District will likely incur \$1 million in costs to regrade the playfields.  
23 Moreover, the City Code provides no support for the calculations the City completed here.  
24 Even if the gross floor area criteria could be applied to an elevation change, the Code does  
25 not allow the City to calculate a percentage increase by focusing on one area of the site. If  
26 anything, the City should have followed the guidance of the gross floor area criteria and  
27 looked at grading increases across the site as a whole, instead of impermissibly focusing on  
28 one part of the site. If the City had completed the calculation correctly, the City would have  
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MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF NOTICE OF  
APPEAL – 10

153676057.3

DOC.  
INDEX

# CC-2

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CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

1 found that the elevation changes across the entirety of the Apple Valley Elementary School  
2  
3 site only constitute a 32% increase over the elevations approved in the building permit—a  
4  
5 percentage well under the 50% threshold for denying a modification application. The  
6  
7 Hearing Examiner's Decision should be reversed and the modification granted.  
8

9 **B. The Findings of Fact Are Not Supported by Substantial Evidence**

10 The Hearing Examiner's finding that the Administrative Official was justified in her  
11  
12 site-elevation-increase calculations and that site grading would have an adverse effect are  
13  
14 not supported by substantial evidence. The Hearing Examiner's Decision must be supported  
15  
16 by substantial evidence that the Administrative Official was justified in how she decided to  
17  
18 calculate the site elevation increase. "Substantial evidence" is evidence of a "sufficient  
19  
20 quantity to persuade a reasonable person that the declared premise is true." *Isla Verde Int'l*  
21  
22 *Holdings v. City of Camas*, 146 Wn.2d 740, 751-52, 49 P.3d 867 (2002). As demonstrated  
23  
24 below, the record does not support a finding that grading elevations are 50% higher than the  
25  
26 approved plans. Further, the City's record consistently demonstrates that the site grading  
27  
28 would not have an adverse effect and that the grading met code requirements.  
29

30  
31 **1. The finding that the Administrative Official was justified in**  
32 **calculating that as-built grading would be more than a 50%**  
33 **increase in elevation is not supported by substantial evidence.**  
34

35 The Hearing Examiner's finding that the Administrative Official was justified in her  
36  
37 site elevation increase calculations—wherein the Administrative Official considered only  
38  
39 the increased elevations at the playfields rather than the average increase in elevation across  
40  
41 the site as a whole—is not supported by substantial evidence. Hearing Examiner's Decision  
42  
43 at 8-9. The Hearing Examiner specifically found that the uncontroverted evidence in the  
44  
45 record demonstrates that the average increase in grade is only 32% across the entire site  
46  
47 from the permit set to the as-built conditions. *Id.* at 8. And the Hearing Examiner concedes

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF NOTICE OF  
APPEAL – 11

153676057.3

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DOC.  
INDEX

# CC-2

OCT 15 2021

CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

1 that were this application looking at an increase in gross floor area, the City would have  
2 looked to an increase in the total square footage of a building as a whole and not particular  
3 areas of a building. *Id.* However, the Hearing Examiner discounts this evidence, saying that  
4 while "it is difficult to apply YMC § 15.17.020(c) by an analogy to site grading elevation,"  
5 such an application by analogy was appropriate because looking at the site as a whole  
6 "would result in consideration of areas away from the adjacent neighbors that would not be  
7 relevant to their concerns." *Id.* The City's calculation and the Hearing Examiner's decision  
8 impermissibly cherry pick the elevation increases that are the subject of the adjacent  
9 neighbors' concerns. Calculating site elevation increases in this way is not allowed under  
10 the City's Code, is not supported by substantial evidence, and does not constitute harmless  
11 error. The School District will incur \$1 million to re-grade the site because, as described  
12 below, the City has chosen to hold the School District to a higher standard for approving  
13 changes in elevation than if the District had applied for a grading permit in the first instance.  
14

25  
26  
27 **2. The Hearing Examiner's finding to uphold the Administrative**  
28 **Official's determination that the as-built grading would cause an**  
29 **adverse effect is not supported by substantial evidence.**  
30

31 The City's record consistently demonstrates that the site grading would not have an  
32 adverse effect and that the grading met code requirements. For the City to approve a  
33 modification request, the "proposed change in the site design or arrangement" must not "in  
34 the determination of the planning division . . . create or materially increase any adverse  
35 impacts or undesirable effects of the project." YMC 15.17.040.B.1.c. However, this  
36 provision of the code imposes a greater burden on an applicant seeking an approval of a  
37 grading modification by incorporating more stringent standards than those required by the  
38 City's grading code.  
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MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF NOTICE OF  
APPEAL – 12

153676057.3

DOC.  
INDEX  
# CU-2

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OCT 15 2021

CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

1 The Yakima Code incorporates the 2018 Washington Building Code, which  
2 addresses what constitutes an adverse impact to adjacent properties from grading. YMC  
3  
4 11.04.010, 11.04.J103.2. Sections J108.3 and J109.4 of the 2018 Washington Building  
5  
6 Code indicate that “adverse effects” to adjacent properties from the grading include only  
7  
8 slope stability, drainage, and potential erosion problems. Yet, the City’s only stated basis  
9  
10 for denying the School District’s modification request—and the Hearing Examiner’s basis  
11  
12 for affirming the Administrative Official’s finding—was neighbors’ concerns regarding the  
13  
14 aesthetic and visual impacts of the higher playfield elevation on their adjacent properties.  
15  
16 See Hearing Examiner’s Decision at 10. But impacts to aesthetics and visual quality are an  
17  
18 improper basis to support an “adverse effects” finding pursuant to the Washington State  
19  
20 Building Code. By upholding the Administrative Official’s finding on the basis of the  
21  
22 neighbor’s aesthetics and visual concerns, the Hearing Examiner improperly applied a  
23  
24 higher standard to the School District’s modification request than would have been applied  
25  
26 to a grading permit for the same work.  
27

28 The record shows that grading would not have adverse effects based on the City’s  
29  
30 environmental review. Rather, the City’s own engineer determined that the as-built  
31  
32 conditions at the school would not cause site stability, erosion, or drainage problems. City  
33  
34 Decision at 6-7. And neither of the City’s SEPA approvals for the Apple Valley Elementary  
35  
36 School project identify any impacts associated with grading. Neither does the SEPA  
37  
38 checklist for the school construction, which indicates that 15,000 cubic yards of grading and  
39  
40 excavation would occur and that “the site is anticipated to be a net balance and no  
41  
42 significant amounts of imported or exported soils are expected.” Finch Decl. ¶ 8, Ex. A,  
43  
44 Attach. 1 at 6. Because there are no slope stability or erosion concerns resulting from the  
45  
46  
47

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF NOTICE OF  
APPEAL – 13

153676057.3

DOC.  
INDEX  
# CE-2

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1 increased playfield elevation, the Hearing Examiner's determination that the grading would  
2 result in adverse effects is not supported by substantial evidence.  
3  
4

5 **C. The Hearing Examiner Committed an Error of Law in Affirming the**  
6 **Administrative Official's Application of a Higher Standard to the Denial**  
7 **of the Grading Modification than Would Have Been Applied to the**  
8 **Initial Grading Permit Review**  
9

10 In the underlying City Decision, the Administrative Official exceeded her authority  
11 in applying a higher standard to the denial of the grading modification than would have been  
12 applied to the initial grading permit review. The Hearing Examiner committed an error of  
13 law and exceeded his authority in affirming this application of a higher standard. Reading  
14 YMC 15.17.040.B.1.c's provision allowing denial of a modification upon the finding of any  
15 new negative impact to aesthetics or visual quality, as the City and Hearing Examiner have  
16 done here, is too expansive of a reading of the City's authority. Because the site design or  
17 arrangement changes that are reviewed in the modification application process will by their  
18 nature involve visual changes, it cannot be the case that any visual changes disliked by the  
19 community is a sufficient reason to deny a modification application.  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

30 A modification application for grading should not be held to a higher standard of  
31 review than the initial grading review. No significant adverse environmental effects were  
32 identified in the SEPA review, and the 2018 Washington State Building Code does not  
33 identify visual changes as an adverse impact to adjacent properties. Yet, the City denied the  
34 School District's modification application on the basis that it would create a new visual  
35 impact. This is not the standard under SEPA, nor the 2018 Washington State Building  
36 Code. See RCW 43.21C.060; Sections J108.3 and J109.4 of the 2018 Washington Building  
37 Code.  
38  
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MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF NOTICE OF  
APPEAL – 14

153676057.3

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DOC.  
INDEX  
# CC-2

OCT 15 2021

CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

1 The Hearing Examiner also committed an error of law and exceeded his authority in  
2 holding that the School District must either successfully appeal the Administrative Minor  
3 Modification decision, or successfully obtain approval of the grading increase through a  
4 Type (3) review process. Hearing Examiner's Decision at 12. The School District went  
5 through the Type (3) review process for the demolition and elementary school rebuilding  
6 project, as this proposed use triggers a Type (3) review process. See YMC 15.15.020. Mere  
7 changes in site elevation should not require a whole new Type (3) review process and a  
8 separate approval on the same scale as the entire school rebuilding project.  
9

10 As the Hearing Examiner himself noted, the grading for Apple Valley Elementary  
11 School was approved via Building Permit No. B200126. "Actions on building permits have  
12 been characterized by [the State Supreme Court] as ministerial determinations." *Chelan Cty.*  
13 *v. Nykreim*, 146 Wn.2d 904, 929, 52 P.3d 1 (2002); *Mission Springs, Inc. v. City of Spokane*,  
14 134 Wn.2d 947, 960, 954 P.2d 250 (1998) (quoting, among others, *State ex rel. Craven v.*  
15 *City of Tacoma*, 63 Wn.2d 23, 27, 385 P.2d 372 (1963) ("[T]he acts called upon by relators  
16 to be done when they asked for a building permit under the city zoning regulations and  
17 building code were not discretionary but ministerial ... Once [the proposed structure  
18 complies with zoning regulations] and the appropriate fee tendered by the applicant, the  
19 building department must issue the building permit.")). "In the eyes of the law the applicant  
20 for a grading permit, like a building permit, is entitled to its immediate issuance [of the  
21 grading permit] upon satisfaction of relevant ordinance criteria and the State Environmental  
22 Policy Act of 1971." *Mission Springs, Inc.*, 134 Wn.2d at 960.  
23  
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41

42 Here, the School District submitted its building permit application, the application  
43 was deemed complete, the SEPA review identified no adverse effects as a result of the  
44 elevation changes at the site, and the building permit issued. The City had no discretion to  
45  
46  
47

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF NOTICE OF  
APPEAL – 15

153676057.3

DOC.  
INDEX  
# CC-2

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OCT 15 2021

CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

1 deny the grading shown in the plan sets based on the concerns of neighbors. Denial of a  
2  
3 grading permit or building permit based on the neighbors' aesthetics and visual concerns  
4  
5 would not have been warranted through the City's building permit process. In other words,  
6  
7 the City could not have denied the School District's building permit if the District had  
8  
9 proposed the current elevations at the site at the time the building permit was issued. The  
10  
11 modification criteria as applied here turn a ministerial act by the City into a discretionary act  
12  
13 by taking into account aesthetic and visual concerns pertaining to the increased elevation at  
14  
15 the site. Similarly, the Hearing Examiner's Decision turns the ministerial act of approving a  
16  
17 building permit into a discretionary Type (3) approval that allows for public notice and  
18  
19 comment and a public hearing. *See* YMC 15.15.040. Public notice and comment are not  
20  
21 aspects of the building permit process. The City should not be allowed to hold a change in  
22  
23 elevation to a higher standard than would have applied to the original building permit. The  
24  
25 Hearing Examiner and Administrative Official exceeded their jurisdiction in denying the  
26  
27 modification permit and requiring the School District to apply for a Type (3) permit.

28  
29 **D. The Hearing Examiner Committed an Error of Law and Exceeded His**  
30 **Authority in Affirming the Administrative Official's Determination That**  
31 **the School District May Be Required to Regrade the Site**  
32

33 Requiring the School District to incur \$1 million in expenses to regrade the site to  
34  
35 address the concerns of a handful of neighbors is not proportionate to the aesthetic and  
36  
37 visual impacts claimed by the neighbors. Yet, the Hearing Examiner rejected this argument.  
38  
39 The Hearing Examiner held that the "nexus and proportionality test" does not apply here  
40  
41 because the Administrative Official's decision "leaves unaffected the grading contour  
42  
43 requirements of the approved 2020 building permit which was not appealed and which will  
44  
45 remain as the grading contour requirements for the site." Hearing Examiner's Decision at  
46  
47 13. However, the Hearing Examiner failed to consider the significant adverse effect on the

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF NOTICE OF  
APPEAL – 16

153676057.3

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DOC.  
INDEX  
# CC-2

OCT 15 2021

CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

1 School District, the taxpayers, and the elementary school students by requiring the School  
2 District to regrade the site consistent with the approved 2020 building permit grading plans.  
3  
4 By so holding, the Hearing Examiner (and the Administrative Official) deemed that  
5  
6 aesthetic concerns of a handful of neighbors trump the exorbitant cost of regrading the site  
7  
8 that both the School District and the City taxpayers will incur. Accordingly, the imposition  
9  
10 of a requirement to regrade the site is contrary to the nexus and proportionality test, which  
11  
12 requires that City may only impose requirements that are proportionate to the impacts of the  
13  
14 proposed action.  
15

16  
17 To impose a requirement that the School District regrade the site, the City and  
18  
19 Hearing Examiner must comply with state limitations on project regulations and exactions  
20  
21 found under the Washington State Constitution. *See Isla Verde Int'l Holdings*, 146 Wn.2d at  
22  
23 759 (mitigation for all land use regulatory exactions must be reasonably necessary as a  
24  
25 direct result of the proposed development); *Honesty in Envtl. Analysis and Legislation*  
26  
27 (*HEAL*) v. *Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 96 Wn. App. 522, 534, 979 P.2d  
28  
29 864 (1999) (rough proportionality requirements limit local governments to imposing  
30  
31 mitigation measures that are roughly proportionate to the impact they are trying to mitigate).  
32  
33 The City and Hearing Examiner have failed to so comply. The School District should not be  
34  
35 asked to regrade the site to an elevation that is 1 to 3 feet less in certain places to address  
36  
37 concerns from neighboring property owners over aesthetic and visual quality issues. Such a  
38  
39 requirement is not proportionate to the alleged impact created by the increased elevation.  
40  
41 The Hearing Examiner and Administrative Official lack authority to require the School  
42  
43 District to regrade the site.  
44  
45  
46  
47

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF NOTICE OF  
APPEAL – 17

153676057.3

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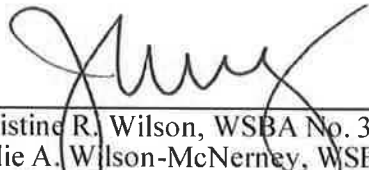
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INDEX  
# CC-2

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CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

1 **VI. CONCLUSION**

2 For the aforementioned reasons, the City Council should reverse the Hearing  
3  
4 Examiner's Decision with respect to grading and approve the as-built site elevations for  
5  
6 Apple Valley Elementary School.  
7

8  
9  
10 DATED: October 15, 2021  
11

  
\_\_\_\_\_  
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*Attorneys for Appellants West Valley School  
District No. 208*

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47  
  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF NOTICE OF  
APPEAL – 18

153676057.3

**DOC.  
INDEX**

**# CC-2**

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CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

**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

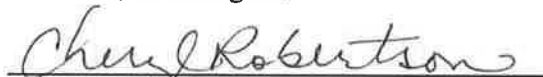
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**ADMINISTRATIVE APPEAL** to be served on the following persons via the methods indicated below:

Joan Davenport, AICP, Community  
Development Director  
City of Yakima, Department of Community  
Development  
129 N. 2nd Street  
Yakima, WA 98901

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

DATED this 15th day of October, 2021 at Seattle, Washington.

  
Cheryl Robertson, Legal Practice  
Assistant

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF NOTICE OF  
APPEAL – 19

153676057.3

**DOC.  
INDEX**

**# CC-2**

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October 13, 2021

To: Yakima City Council  
c/o Joan Davenport AICP, Community Development Director  
City of Yakima, Department of Community Development  
129 N. 2<sup>nd</sup> Street  
Yakima, WA 98901

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OCT 13 2021

CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

From: John and Candace Manfredi

Subject: Testimony opposing APP#008-21, West Valley School District #208

Dear Council,

Who we are: We are a neighbor, living immediately south of the Apple Valley School south playground. We built our home here in 2005. We have been adversely impacted by the 4' playground grade raise. We are submitting testimony opposing this appeal, APP#008-21. We would like the Council to know that we voted "yes", for three Apple Valley School replacement bond issues. Our "yes" votes were consistent with our lifelong support of public schools. In fact, we have voted "yes" for every school levee and every school bond for our 52 year voting history, in Denver, Billings, Klamath Falls, and in Yakima since 1984.

West Valley School District illegal violations: In their 2020 and 2021 Apple Valley School construction, the District intentionally built large grade raises on the south and east playgrounds. These grade raises violated legal commitments of their own December 30, 2019 Public Review Document and the March 2, 2020 Hearing Examiner's Decision. The District also violated their own building permit drawing B200126, approved April 7, 2020. Throughout the playground construction, and since, the District has refused to admit their violations. City Administrative Officer and Hearing Examiner have both recognized these grade raises are violations, and decided against the District in MOD#021-21 and APP#001-21.

Adverse impacts from violations: We have been adversely impacted by the District's 4' playground grade raise built immediately north of our residential property. Other neighbors south and east of the playground have also been adversely impacted by the District's grade raise. The adverse impacts include: lost view, lost privacy, personal safety, nuisance and reduced property value. Throughout their work, and since, the District has refused to recognize these adverse impacts. The City Administrative Officer and the Hearing Examiner have both recognized the adverse impacts, and decided against the District in MOD#021-21 and APP#001-21.

Our proposed resolution: Considering all issues relevant to this current appeal, we believe the City Council will decide against the District. However, we propose a better resolution. In our previous testimony for APP#001-21, and in our additional testimony, below, we propose that adverse impacts of the District's grade raises be mitigated. Please see our Summary statement on page 5 below.

We thank the Council members for considering our testimony, and our proposed resolution.

Sincerely,

John and Candace Manfredi

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CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

### **Previous Testimony**

For Council reference, below is a list of our previous testimony. The City told us they will forward our previous testimony on MOD#021-21 and APP#001-21 to the Council.

Testimony supporting the school replacement project:

December 30, 2019	Notice of Application, Environmental Review, & Public Hearing
March 2, 2020	Notification of Hearing Examiner's Decision

Testimony opposing the illegal grade raise:

June 30, 2021	Findings of Fact, Conclusions, & Decision,	MOD#021-21
Aug 26, 2021	Hearing Examiner's Decision,	APP#001-21

### **Additional Testimony on Specific Articles of the District's Appeal, APP#008-21:**

Our additional testimony on APP#008-21 follows on pages 3 – 5 below.

OCT 13 2021

CITY OF YAKIMA  
COMMUNITY DEVELOPMENT**Additional Testimony on Specific Articles of the District's Appeal, APP#008-21:**

Appellant articles 6.a. and parts of 6.b. state: "YMC 15.17.020.C does not speak to changes in site elevation. We agree. Our previous written testimony under APP#001-21 stated the subject YMC does not apply to grade raises; it only applies to "gross floor area". Under that same appeal, the Hearing Examiner also found no analogy between gross floor area and grade raise; his Decision found that the YMC 15.17.010.C only applies to "gross floor area" and not to grade raises. His decision also explained that the Appellant's 32% average grade raise considers areas away from the neighbors, and is therefore irrelevant to neighbor's concerns. He also stated that grade raises much larger than 132%, located near neighbor's lots do cause impact. 150% and 132% grade raise issues are both irrelevant to the current Appeal APP#008-21.

Appellant article 6.b. states: "the average increase in grade of 32% across the entire site . . . as a whole is consistent with YMC 15.17.020". This statement is wrong. Below is a list of YMC subparts and what they cover. The term "grade raise" is not used in any subpart. In engineering and construction, grade raises are earth embankment and are within a reasonable definition of a structure. There are many examples of embankments as structures, or part of structures, typically designed by engineers. For example earth dams, dikes and levees, elevated roads, bridge and overpass abutments, buildings built into sloped terrain or built on engineered earth fills. In Mod#021-21 and APP#001-21 the Administrative Officer and Hearing Examiner should have considered that earth grade raises are within the definition of structures. If grade raises are considered a structure, then subpart D applies.

YMC 15.17.020A	"residential density"
YMC 15.17.020B	"parking"
YMC 15.17.020C	"gross floor area"
YMC 15.17.020D	"height of structure"
YMC 15.17.020E	"cumulative effects"
YMC 15.17.020F	"drive-thru facilities"
YMC 15.147.020	"hazardous materials"

By the grade / structure analogy, YMC 15.17.020D says: "The modification will not increase the height of any structure", i.e. "will not increase the height of any grade". Therefore the District's grade increases specifically violate article YMC 15.17.020D. The District's arguments in their Article 6.a. and b. of their current appeal, APP#008-21, are either wrong, irrelevant or self-defeating.

Appellant article 6.c. says "adverse effect is not supported by substantial evidence." We strongly disagree with this statement. In our written testimony for APP#001-21 we stated adverse impacts include lost view, lost security, lost privacy, nuisance, and reduced property values. The City's Administrative Official and the Hearing Examiner both recognized adverse impacts, and the Hearing Examiner added "personal safety" as an adverse impact (see HE Decision, 08/26/21, page 11). The appellant says that adverse effects are limited to slope stability, drainage, and potential erosion problems. That is a ridiculous limitation. Adverse effects can include hundreds of categories and issues. This is why projects undergo Type (3) public review including many categories and issues that can cause adverse impacts. Grade raises violated the 2019/2020 Public Review Document, HE Decision of Feb 2020, and permit drawing B200126, and those violations have caused adverse impacts on neighbors.

First, may we address the issue of drainage which the District says is not in violation. Refer to our previous written testimony for APP#001-21, where we explained that along the east side of the playground the contractor did not correctly build a drainage swale. We also explained that the City's Surface Water Engineer

OCT 13 2021

CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

was wrong, and why he was wrong. The HE's site visit and Decision APP#001-21 did not understand our explanation of the drainage violation, and he did not see that the drainage violation, an incorrectly built drainage swale, still exists.

Second, may we address violations and adverse impacts from the grade raise itself. Our previous testimony for APP#001-21 explained that adverse effects (or adverse impacts) on neighbors come from the District intentionally violating their own 2019/20 Public Review Document and HE Decision of Feb 2020. There is no question that the District violated provisions in those 2019 and 2020 Documents by raising the grade and blocking views across the S and E playgrounds. There is no question that those District violations caused adverse impacts on the neighbors. There is also no question that the District has purposely refused to look at or acknowledge the adverse impacts. Our previous written testimony on APP#001-21, explains the step-by-step grade raise work and chronology, in laborious detail. We also explained the adverse impacts on neighbors; please take time to read this previous testimony. The City in MOD#021-21, and the HE Decision in APP#001-21, also clearly understood that neighbors have adverse impacts, as both documents affirm and refer to them multiple times. It is worth restating here that grade raises violated the District's own 2019/20 Public Review Document and 2020 HE Decision (written by Gary Cuillier), and also violated the District's own permit drawing B200126. All the violations were deliberately done by the District in step-by-step fashion over a period of months, and are now disclaimed by the District.

We would like to elaborate on the adverse impact of "personal safety" which the HE recognized in his 08/26/21 decision, page 11. In our view this safety impact applies to neighbors because people standing on the grade raises can more easily see into our back yards and homes. Neighbors are less safe in our own back yards and homes because of this. Some of us are now considering installing security cameras. Personal safety can also apply to school children playing on the downslope of grade raises, because school staff standing on the flat portion of the playgrounds, can no longer see children playing on the downslopes. It can also apply to criminals who can hide on the downslopes, out of school yard view and out of neighbor's view. The grade raise downslopes around the playgrounds outer perimeter, together with the school's chain link property fence with slats, create a hiding area for criminal mischief. In past years, when the playground was flat, anyone on the playground could see anyone else. No one could hide on the playground. In the past we could see across the playground, and often called Yakima Police to report suspicious evening activity in the schoolyard, and even on the school roof. In the past 15 years, after calling Yakima Police, we sometimes observed police cars driving and spotlighting across the schoolyard, all of which could be easily seen. The grade raise has created hiding areas along the South and East perimeter of the school yard. Hiding areas are contrary to new design recommendations for schools, parks, and public grounds; designs now discourage hiding areas.

In summary, grade raises have caused definite adverse impacts to the residents, possible adverse impacts to the school building and to school children's safety, and may facilitate criminal activity.

Appellant article 6.e. objects to the HE proposal of a Type (3) review for the grade raises, because the original project went through a Type (3) review in 2019/2020. The HE proposed a Type (3) review for the grade raises because he actually presided over the 2019/2020 public Type (3) review, and he knows that review did not address grade raises for the S and E playgrounds. Actually the 2019/2020 public review clearly portrayed that the S and E playgrounds would "remain" and "be maintained"; those terms were used nine times in the District's public review document. Neighbors clearly understood from the 2019/2020 public review and 2020 HE decision that the S and E playgrounds would remain the same as they had been for decades; that meant no grade raises. In APP#001-21, the HE also explains that a Type (3) review is needed for the grade raises because grade raises have caused adverse impacts. Refer to our previous written testimony for APP#001-21 which explains that grade raises were not in the 2019/2020 Type(3) public review.

OCT 13 2021

CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

Appellant article 6.f. reargues "nexus and proportionality. In his Decision on APP#001-21, the HE recognized the District's previous testimony on nexus and proportionality. Our previous written testimony on APP#001-21 recognized the practical reasons for considering the cost to lower the grade vs the cost to pay neighbors for damages. We suggested that the District estimate the cost to lower the grade. In their oral testimony for APP#001-21 the District did so, presenting an estimate of \$1 million. We believe that is a reasonable estimate, and agree with the District, objecting to such a high expenditure. That is why our previous testimony, on APP#001-21, proposed damage settlements for each neighbor based on their individual adverse impacts. Please refer to our previous written testimony. There are two additional reasons that we prefer damage settlements to lowering the grade. First, we, and all the neighborhoods adjacent and downwind of the school yard, suffered blowing dust from the schoolyard work almost daily for the spring, summer and fall months of construction, 2020 and 2021. Hundreds of days and mornings we found layers of dust on our patio, autos, garage, siding and windows, and inside our homes. In those two years, we spent dozens of hours cleaning up this dust and are tired of doing so. We cannot bear another summer of dust, for the grade to be lowered. Second, the District has been prejudicing parents, neighbors and district citizens against us "handful of neighbors" as their appeal calls us. This prejudice is totally unfair. We "handful of neighbors" are also district taxpayers and we personally voted "yes" three times, for three school replacement bond issues. We "handful of neighbors" also cringe at spending \$1 million dollars to lower the grade. We like school children, and hate that the District is trying to blame us for defending ourselves against adverse impacts caused by their illegal grade raises. This is misplaced blame, blame shifting and bullying. We "handful of neighbors" have done nothing wrong. We did not author, and then violate, the public review documents and building permit. We did not deliberately raise the grade, step by step over months. We did not cause adverse impacts on ourselves. We know the District's strategy of shifting blame is working, because several neighbors have asked us not to oppose the appeal. Other neighbors no longer wave to us, or greet us in the friendly way they had for the past 15 years. So we don't want to force \$1 million dollars to be spent, we don't want to suffer more dust, and don't want to be blamed for both. We would prefer mitigation.

### Summary

In summary, the District's grade raise work violated their own public hearing documents and Hearing Examiner's Decision that enabled the school replacement project, and they violated their own building permit. These violations caused adverse impacts. The Administrative Official and Hearing Examiner, both denied the Districts request to approve grade raises, because of the violations, and because there were adverse impacts on neighbors. We believe there is a better solution to grade raise violations than to spend \$1 million to lower the grade. The District could settle their adverse impacts on those neighbors, who are "party of record" in this appeal, by paying damages for adverse impacts. This would require a case by case determination of impacts and damages, and for some neighbors may include the cost of selling and moving. We ask the City Council to allow the District time and opportunity to negotiate damage settlements with those neighbors who are "parties of record" to this appeal. If settlements can be made, those neighbors could disclaim their adverse impacts. Without adverse impacts, the City Council could approve the District's appeal. This would be much cheaper, easier and cleaner than forcing a \$1 million expenditure of District tax money to lower playground grades. It would also avoid wasting more time and money by the District, City, and neighbors, in another appeal to Yakima County Superior Court.

[illegible]



DEPARTMENT OF COMMUNITY DEVELOPMENT

Joan Davenport, AICP, Director

Planning Division

Joseph Calhoun, Manager

129 North Second Street, 2<sup>nd</sup> Floor, Yakima, WA 98901

ask.planning@yakimawa.gov · www.yakimawa.gov/services/planning

**CITY OF YAKIMA**

**APPEAL OF THE ADMINISTRATIVE OFFICIAL'S DECISION**

**for**

**REQUEST FOR MODIFICATION**

<b>FILE NUMBER(S):</b>	APP#001-21, MOD#021-21
<b>APPLICANT:</b>	West Valley School District c/o Peter Finch
<b>PROJECT LOCATION:</b>	7 N. 88th Ave.
<b>PROPERTY OWNER:</b>	West Valley School District #208
<b>TAX PARCEL NUMBER:</b>	181319-42006 & -42022
<b>DATE OF REQUEST:</b>	May 28, 2021
<b>DATE OF COMPLETE APP:</b>	June 30, 2021
<b>DATE OF DECISION:</b>	June 30, 2021
<b>DATE OF APPEAL:</b>	July 14, 2021
<b>DATE OF RECOMMENDATION:</b>	August 12, 2021
<b>STAFF CONTACT:</b>	Eric Crowell, Associate Planner

**I. DESCRIPTION OF REQUEST:**

Appeal of the decision for a Modification denying the regrading of the site in the R-1 zoning district.

**II. FACTS:**

**A. Processing**

1. In response to a zoning ordinance violation reported on May 25, 2021 (Code Compliance Case CA211326), the application for a Modification was received on May 28, 2021, which proposed 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, which was originally approved by the Hearing Examiner on February 28, 2020 under CL3#010-19.
2. The application was deemed complete for processing on June 30, 2021.
3. This application was processed under the provisions of Ch. 15.17 (Modification), specifically the provisions that allow abbreviated review by the administrative official (minor modification).

**DOC.  
INDEX  
# A-1**



4. The Administrative Official issued a Notice of Decision on June 30, 2021, approving the 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 sitescreening, but denied the request for regrading concluding that the proposed increase in site grading elevation creates an adverse impact of the project.
5. On July 14, 2021, a timely appeal was filed by West Valley School District.
6. **Public Notice:** Pursuant to YMC § 16.08.018 – Appeal of the Administrative Official's Decision:
  - a. The subject site was posted with land use action signs on August 2, 2021;
  - b. On July 23, 2021, a Notice of Appeal and Public Hearing was sent to parties of record, the applicant, and the appellant that set the hearing date of August 12, 2021 at 9:00 a.m.; and
  - c. On July 23, 2021, a legal notice was provided in the *Yakima Herald-Republic*.

**B. Hearing Examiner Authority:**

In accordance with YMC § 16.08.018(G), the Hearing Examiner may affirm or reverse, wholly or in part, or modify the order, requirement, decision, or determination, and to that end shall have all the power of the officer from whom the appeal is taken.

**III. APPEAL RESPONSE:**

**A. Appeal:**

The appellant provides the following statements (staff response is in *italics*):

**1. The Administrative Official Committed an Error of Law in Partially Denying the Modification Application.**

*YMC § 15.17.020 (C) states that "any expansion of use area or structure will not exceed fifty percent of the gross floor area." The appellant states that the regrading should not be subject to this 50 percent maximum since the limit is based on the gross floor area, which they argue should not be applied to use area.*

*While in this situation the use area does not involve gross floor area as defined by the zoning ordinance, this standard is used for evaluation purposes. Otherwise, Ch. 15.17 would in effect be limited to modifications involving changes in building area and parking supply, of which this proposal is not concerned with such site improvements. A previously approved use that does not comply with the modification criteria allowing abbreviated review must instead apply for full land use review for a proposed modification—in this case a new Type (3) Review.*

**DOC.  
INDEX  
# A-1**

*Further, the Administrative Official also reviews whether the proposed change "will create or materially increase any adverse impacts or undesirable effects of the project," per YMC § 15.17.040(B)(1)(c). Whether there is a material increase in the adverse impacts is to be determined by the planning division under the YMC.*

**2. The Findings of Fact Are Not Supported by Substantial Evidence.**

**1. The Finding that the as-built grading would be more than a 50% increase in elevation is not supported by substantial evidence.**

*While it is true that in some areas the height increased and in others it decreased, the average change in elevation was not used to determine that the modification exceeded 50 percent. Any contour whose height change was identified as exceeding 50 percent of the height of a contour it crossed that was approved on the original building plan was determined as having violated the 50 percent limit. The Administrative Official compared the contour lines submitted by Appellant with its building permit to the contour lines shown on the revised Modification Site Plan. Based on the contour lines provided in these two documents, the Administrative Official determined that there were areas where the height change in grading exceeded the 50% threshold. There is no language in the code indicating that averaging is a correct method to determine the 50% threshold.*

**2. The finding that the as-built grading would cause an adverse effect is not supported by substantial evidence.**

*In addition to the quantitative criteria, YMC § 15.17.040 (B) also provides that a proposed modification "will not adversely reduce the amount of existing landscaping or the amount or location of 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."*

*Because the elevation changes by a few feet in some locations, this reduces the effectiveness of the view-obscuring sitescreening material the school district agreed to install upon an existing six-foot-tall fence.*

**3. The City Exceeded Its Authority in Requiring the School District to Regrade the Site.**

*Appellant applied for a minor modification to allow it to keep the grading the same as built, which was not compliant with the building permit issued in 2020. The Administrative Official denied the application. The Administrative Official is not requiring any regrading, rather is requiring that the grading be consistent with the approved building permit.*

*Due to the Appellant's grading outside the permitted levels in the 2020 permit, the on-site elevation changed significantly from what was on the previously*

*approved building plans to what was constructed on-site. The appellant states that "no substantial evidence has been provided to demonstrate the nexus or proportionality between probable impacts of the proposed action and the requirement that the School District regrade the site." Based on the extent of the new grading, the City denied the minor modification to the grading of the site, and the City is not requiring any mitigation or other action inconsistent with the approved building permit.<sup>1</sup> Applications not meeting the criteria may apply directly for review as a Class...(3) use or development to seek modifications to their development plans or permits.*

**IV. CONCLUSIONS:**

- A. The appellant has not submitted any new evidence that demonstrates that the regraded elevation and terrain is consistent with the modification criteria allowing for abbreviated review of minor modification requests, of Ch. 15.17, including limits of expansion and impacts on sitescreening.
- B. As this is an open record public hearing, new evidence may be presented up to the date of the public hearing, however any new evidence shall be related to the points raised in the appeal application.
- C. The Hearing Examiner has the jurisdiction to render a final decision on this matter.

**V. RECOMMENDATION:**

Based upon the above findings and conclusions, the City of Yakima recommends **denial** of the Appeal (APP#001-21) and **retention** of the Modification decision (MOD#021-21).

---

<sup>1</sup> Appellant argues that the decision by the administrative official to uphold the original building permit plans rather than to allow Appellant to simply conform those plans to what was built on-site is subject to a nexus and proportionality analysis. The City disagrees. Appellant chose to grade the ballfields in a way that violated its approved 2020 building permit. Requiring compliance with the original building permit does not constitute an exaction and the City is not requesting mitigation or other measures outside of the original building permit requirements; it is denying the minor modification request. "[T]he nexus and rough proportionality rules do not apply to outright denial of a project...." *Honesty in Environmental Analysis and Legislation (HEAL) v. Central Puget Sound Growth Management*, 96 Wn.App. 522, 534, 979 P.2d 864 (1999), citing *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 703, 119 S.Ct. 1624 (1999) ("The rule ... was not designed to address, and is not readily applicable to, the much different questions arising where...the landowner's challenge is based not on excessive exactions but on denial of development. We believe, accordingly, that the rough-proportionality test of Dolan is inapposite to a case such as this one.").

**(MOD#021-21 APP#001-21)**

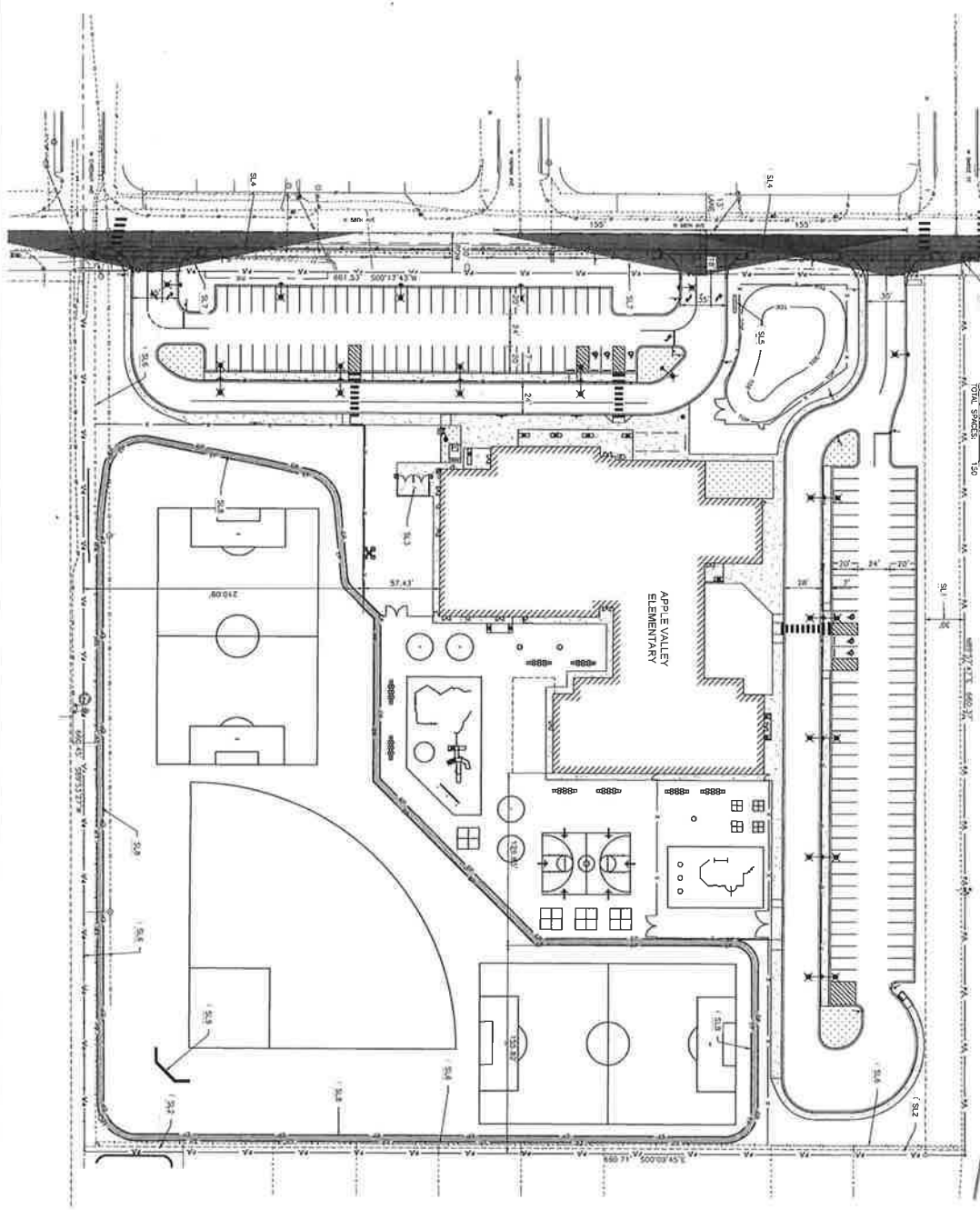
## CHAPTER B

# Maps

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**SITE INFORMATION:**  
 ADDRESS: 7th & 8th AVE.  
 PARCEL # 191318-42021  
 191318-42008  
 ZONING: R-1  
 OWNER: WEST VALLEY SCHOOL DIST.  
 YAKIMA, WA 98908  
 TOTAL AREA: 10.9 AC  
 TOTAL SPACES: 144  
 TOTAL SPACES: 150

**PARKING COUNT:**  
 PER THE 1200 SQ. FT. TABLE 9-1.3 SPACES FOR EACH CLASSROOM  
 REQUIRED OR 1 SPACE FOR EACH 3 STALLS IN ASSEMBLY AREA  
 CLASSROOMS: 205  
 STALLS: 205  
 PARKING REQUIRED BASED ON ASSEMBLY SEATING 225/3 = 75  
 STALLS  
 MINIMUM 81 STALLS REQUIRED



- SCALE DISTANCE NOTES:**
- 1) PROVIDE FOR GENERAL PURPOSES
  - 2) PROVIDE FOR GENERAL PURPOSES
  - 3) PROVIDE FOR GENERAL PURPOSES
  - 4) PROVIDE FOR GENERAL PURPOSES

**KEYED NOTES**

- 1) 30'-7" RESERVED FOR ROAD R/W AND
- 2) 17840-41
- 3) 4'-7" DRIVEWAY EASEMENT FOR 17894-1
- 4) 17894-1
- 5) 17894-1
- 6) 17894-1
- 7) 17894-1
- 8) 17894-1
- 9) 17894-1
- 10) 17894-1
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 JUN 21 2021  
 CITY OF YAKIMA  
 PLANNING DIV.



CALL 811 TO REPORT A PROBLEM  
 WITH YOUR UTILITY SERVICE  
 BEFORE YOU START ANY WORK  
 TO PREVENT DAMAGE TO  
 YOURSELF, YOUR PROPERTY,  
 AND THE ENVIRONMENT.

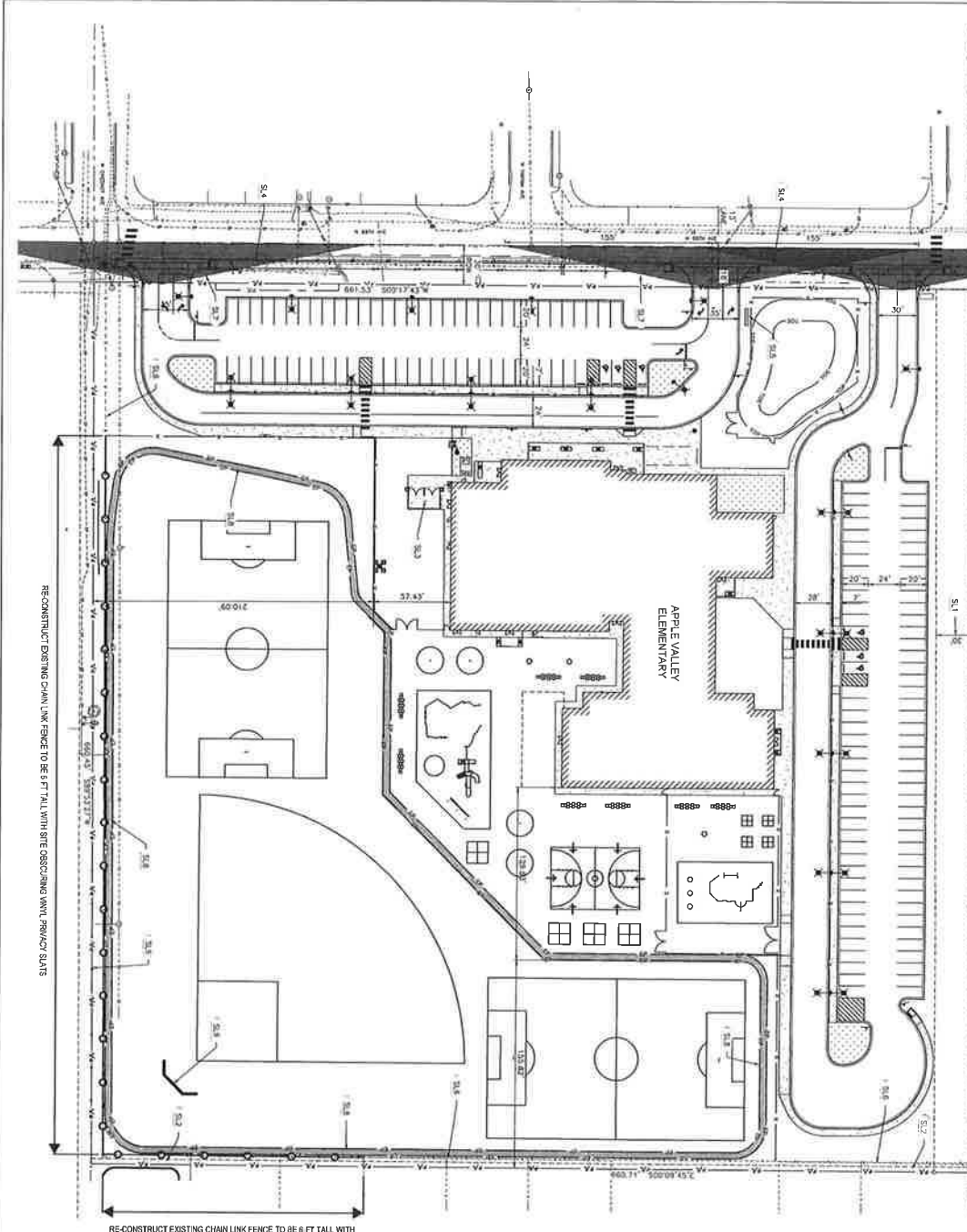
<b>DESIGN WEST</b> 1000 N. 10TH AVE. SUITE 201 YAKIMA, WA 98908 (509) 225-1111 WWW.DESIGNWEST.COM	<b>WEST VALLEY SCHOOL DISTRICT</b> 1000 N. 10TH AVE. SUITE 201 YAKIMA, WA 98908 (509) 225-1111 WWW.WESTVALLEYSCHOOLDISTRICT.COM	<b>JUB ENGINEERS, INC.</b> 2610 W. Clearwater Ave. Suite 201 Kennewick, WA 99336 (509) 225-1111 WWW.JUBENGINEERS.COM	<b>PROTOTYPE ELEMENTARY          WEST VALLEY SCHOOL DISTRICT</b> APPLE VALLEY - 7th & 8th AVE SUMMITVIEW - 6305 W CHESTNUT AVE YAKIMA, WASHINGTON 98908	DATE: 2/4/20 SHEET NAME:	OVERALL SITE PLAN C1.00
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DOC. INDEX  
 # B-3



**ALL INFORMATION**  
 PROJECT # 18-119-4200  
 ZONING R-1  
 OWNER WEST VALLEY SCHOOL DIST.  
 PROJECT 2221 RD  
 YAKIMA, WA 98908  
 TOTAL AREA 13.5 AC  
 5' WIDE  
 60' SPACING 144  
 60' SPACING 150

**PARKING COUNT** TABLE 6-1.3 SPACES FOR EACH CLASSROOM  
 REQUIRED OR 1 SPACE FOR EACH 3 SEATS IN ASSEMBLY AREA  
 CLASSROOMS: 27  
 PARKING REQUIRED BASED ON CLASSROOM COUNT: 27 x 3 = 81 STALLS  
 55' x 22' STALLS REQUIRED BASED ON ASSEMBLY SEATING: 25/3 = 75  
 STALLS  
 MAXIMUM 81 STALLS REQUIRED



RE-CONSTRUCT EXISTING CHAIN LINK FENCE TO BE 6 FT TALL WITH 8 FT OBTUSCURING VINYL PRIVACY SLATS

RE-CONSTRUCT EXISTING CHAIN LINK FENCE TO BE 6 FT TALL WITH  
 SITE OBTUSCURING VINYL PRIVACY SLATS. EXTEND TO 3RD ADJACENT  
 PROPERTY LINE FROM THE SOUTH

**RECEIVED**  
 JUN 28 2021  
 CITY OF YAKIMA  
 PLANNING DIV.

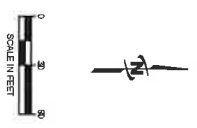
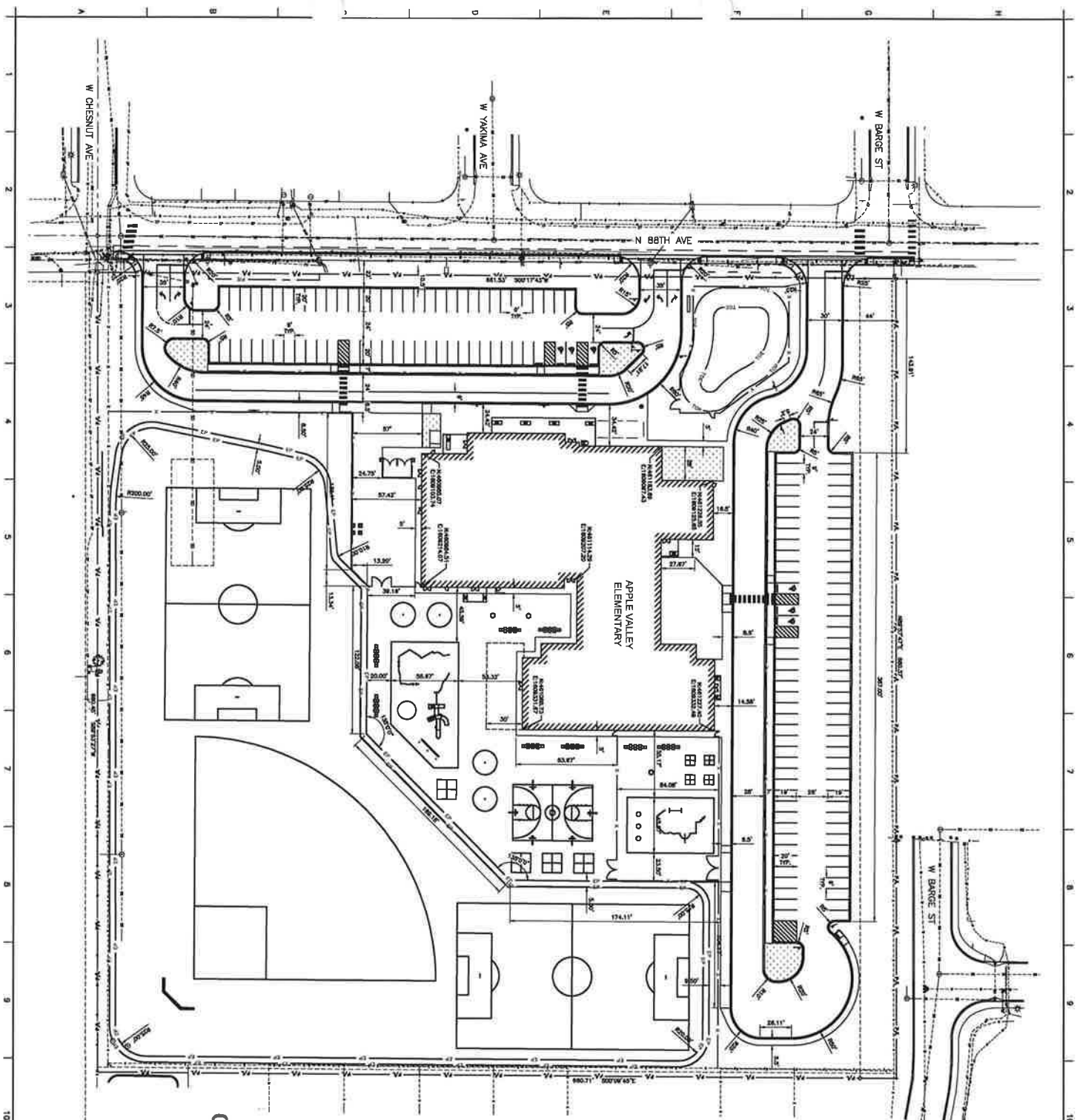
- KEYED NOTES**
- 1) SPOT DISTANCE THICKNESS ARE SHOWN ALONG
  - 2) POSTED SPEED 25 MPH
  - 3) DRIVEWAY SPOT DISTANCE 15'-17' PER WDOT DESIGN
  - 4) SAME DIMENSIONS APPLIED AT ALL ENTRANCES

- KEYED NOTES**
- (S1) SPOT DISTANCE THICKNESS ARE SHOWN ALONG
  - (S2) 4'-17' DRIVEWAY THICKNESS ARE SHOWN ALONG
  - (S3) THICK DRIVEWAY THICKNESS ARE SHOWN ALONG
  - (S4) DRIVEWAY THICKNESS ARE SHOWN ALONG
  - (S5) DRIVEWAY THICKNESS ARE SHOWN ALONG
  - (S6) DRIVEWAY THICKNESS ARE SHOWN ALONG
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  - (S100) DRIVEWAY THICKNESS ARE SHOWN ALONG

**811**  
 CALL 3 BUSINESS DAYS IN ADVANCE BEFORE  
 YOU DIG, DRILL, OR EXCAVATE FOR THE  
 MARKING OF UTILITIES

		<b>JUB ENGINEERS, INC.</b> 2810 W. Clearwater Ave. Suite 201 Kennewick, WA 98336 Phone: 509.783.2141 www.jub.com	<b>PROTOTYPE ELEMENTARY          WEST VALLEY SCHOOL DISTRICT</b> APPLE VALLEY - 7 N 9TH AVE SUMMITVIEW - 6365 W CHERMUT AVE YAKIMA, WASHINGTON 98908	<b>OVERALL          SITE PLAN</b> DATE: 2/4/20 SCALE: AS SHOWN <b>C1.00</b>
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**DOC.  
 INDEX  
 # B-3**



NOTE:  
 DIMENSIONS AT CURB ARE TO FACE OF CURB  
 UNLESS NOTED OTHERWISE.

SITE INFORMATION  
 ADDRESS: 7 N. 88TH AVE.  
 YAKIMA, WA 98908  
 PARCEL # 181318-42021  
 181318-42006  
 ZONING: R-1  
 OWNER: WEST VALLEY SCHOOL DIST.  
 8802 25th St NW  
 YAKIMA, WA 98908  
 509-472-4001  
 ANGELA VANNESS  
 TOTAL AREA: 10 AC  
 TOTAL LOT: 495K  
 PARKING SPACES: 136  
 TOTAL STREETS: 17

DOC.  
 INDEX  
 # B-2

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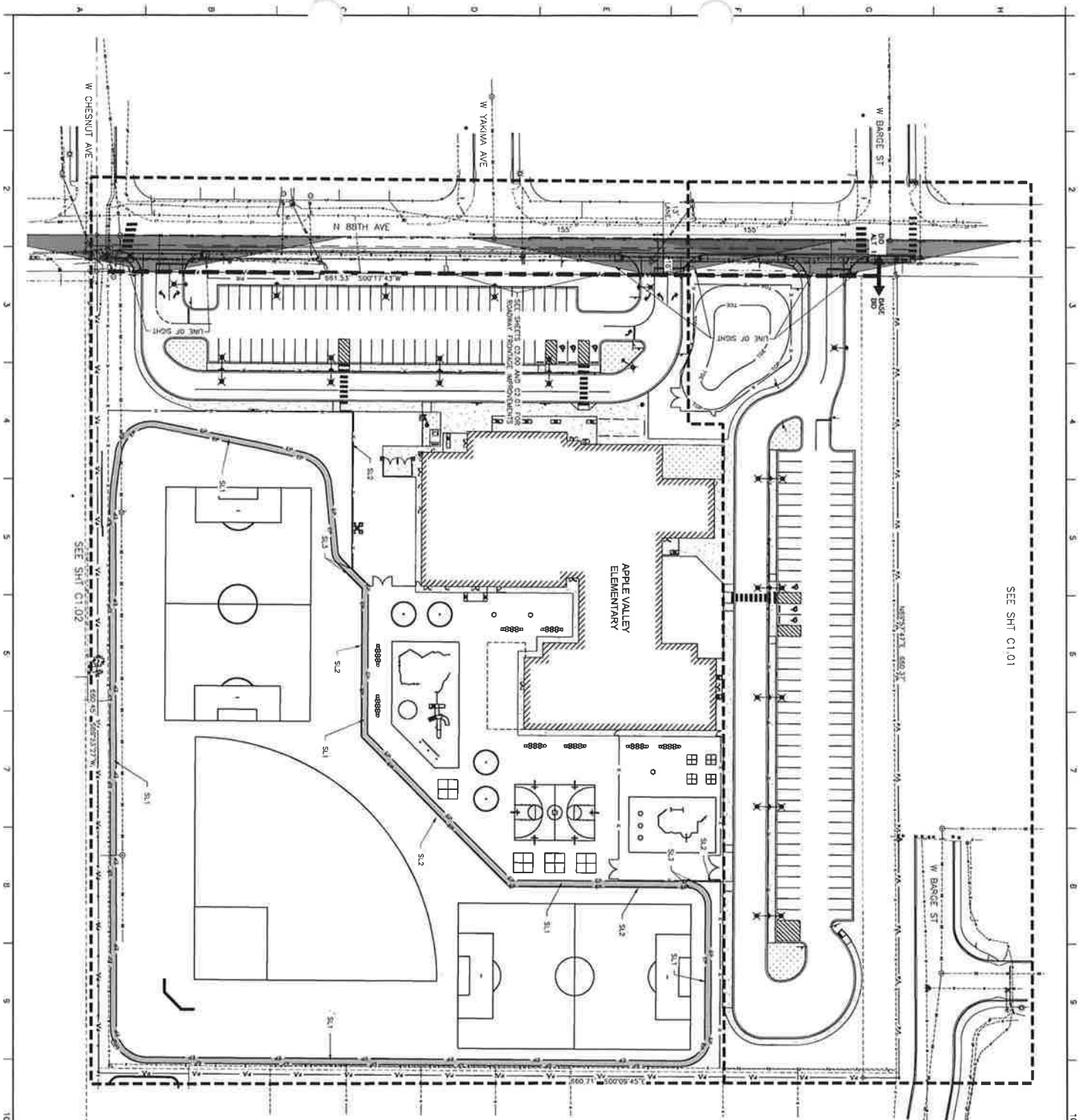
MAY 26 2021

CITY OF YAKIMA  
 COMMUNITY DEVELOPMENT



CALL 2 BUSINESS DAYS IN ADVANCE BEFORE  
 YOU DRILL, GRADE, OR EXCAVATE FOR THE  
 LAYOUT OF UNDERGROUND UTILITIES

C0.20	SHEET	GEOMETRIC CONTROL PLAN	DATE 2/4/20	SHEET NAME	PROTOTYPE ELEMENTARY WEST VALLEY SCHOOL DISTRICT APPLE VALLEY - 7 N 88TH SUNNITVIEW - 6305 W CHEST YAKIMA, WASHINGTON 9		J-U-B ENGINEERS, INC. 2810 W. Clearwater Ave. Suite 201 Kennewick, WA 99336 Phone 509.783.2144 www.jub.com		DESIGN WEST 4000 10TH AVE S.W. SUITE 100 SEASIDE, WA 98148 509.422.1111 www.designwestwa.com	DESIGN WEST 4000 10TH AVE S.W. SUITE 100 SEASIDE, WA 98148 509.422.1111 www.designwestwa.com
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SEE SHIT C1.01

SEE SHIT C1.02

APPLE VALLEY  
ELEMENTARY

**MAY 26 2021**  
CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

RECEIVED

DOC.  
INDEX  
# B-2

- KEYED NOTES**
- 1) SHOT DISTANCE TRIANGLES ARE SHOWN ALONG
  - 2) PAVED SIDEWALKS ARE SHOWN ALONG
  - 3) DRIVEWAY SHOT DISTANCE 155-FT PER WSDOT DESIGN
  - 4) SAME DIMENSIONS APPLIED AT ALL ENTRANCES



CALL 3 BUSINESS DAYS IN ADVANCE BEFORE  
ANY CHANGES TO THE DESIGN OR  
MATERIALS OF CONSTRUCTION BEING  
UTILIZED.

<p><b>DESIGN WEST</b> ARCHITECTS &amp; ENGINEERS 1000 N. 1ST AVE., SUITE 200 YAKIMA, WA 98901 PHONE: 509.783.2144 WWW.DESIGNWEST.COM</p>	<p>DESIGNED BY JUB</p>	<p>DATE 2/4/20</p>	<p>SHEET NAME OVERALL SITE PLAN</p>	<p>SHEET NO. C1.00</p>
	<p>J-U-B ENGINEERS, INC. 2810 W. Clearwater Ave., Suite 201 Kennewick, WA 98336 Phone: 509.783.2144 www.jub.com</p>	<p>PROTOTYPE ELEMENTARY WEST VALLEY SCHOOL DISTRICT</p>	<p>APPLE VALLEY - 7 N 88TH SUMMITVIEW - 6355 W CHEST YAKIMA, WASHINGTON 9</p>	<p>YAKIMA SCHOOLS DISTRICT</p>



DOC.  
INDEX  
# B-2



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MAY 26 2021

CITY OF YAKIMA

## COMMUNITY DEVELOPMENT

W. BARRETT S.

## LEGEND

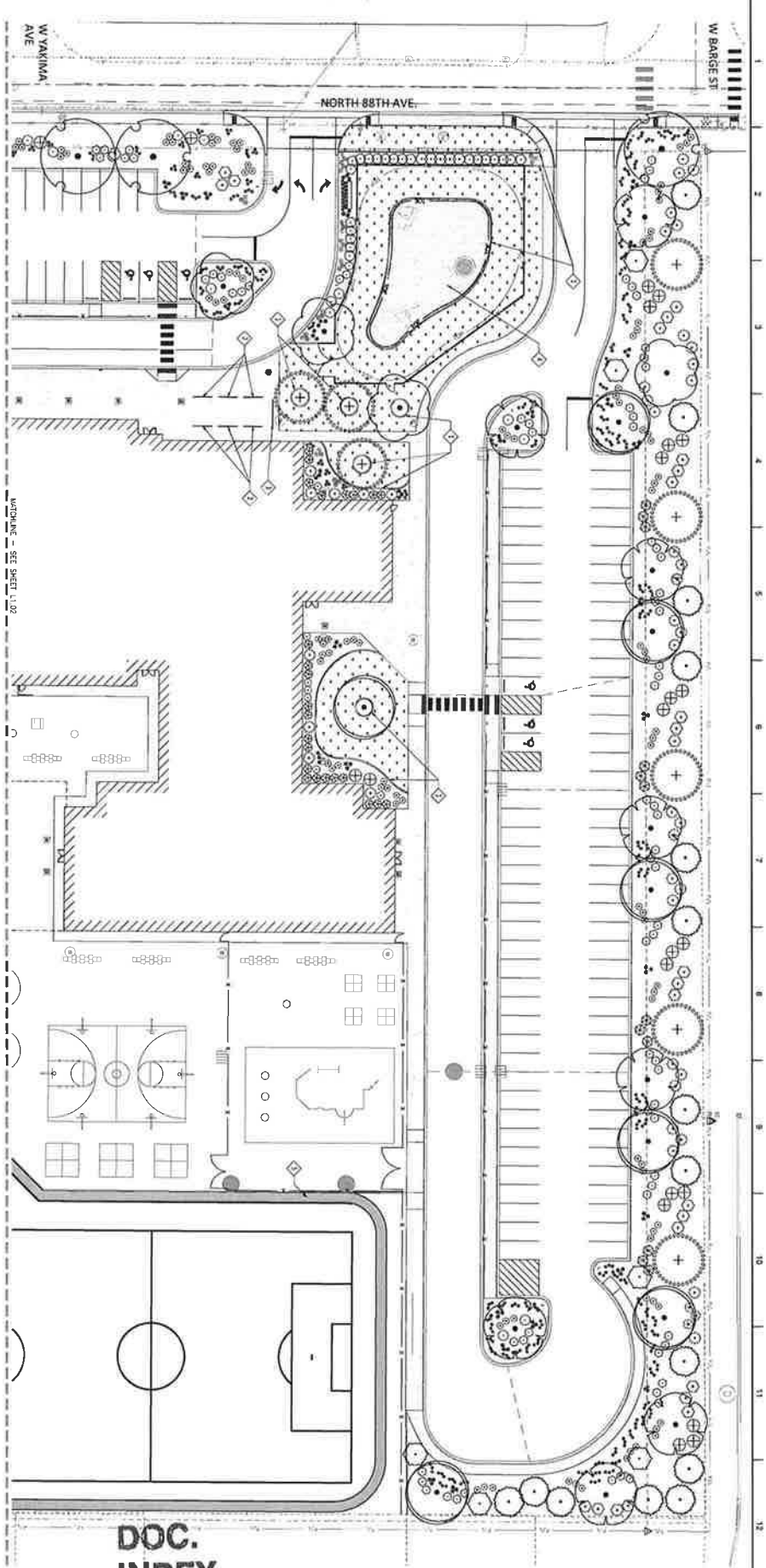
45	EG MINOR CONTOUR
45	EG MAJOR CONTOUR
45	EG MINOR CONTOUR
45	EG MAJOR CONTOUR

ED	EXISTING GRADE
FF	FINISHED FLOOR
FD	FINISHED GRADE
TOC	TOP OF CURB
TW	TOP OF WALK

1. **CONTRACT** - SPOT PLANTING ARE NOT OF FINISHED GRADE UNLESS OTHERWISE NOTED.
2. **PLANTING** - PLANTING SHALL BE ACCORDING TO THE PLANTING GUIDE OF CALIF. SPOT PLANTING BY THE CALIF. NATURALIST SOCIETY.
3. **LANDSCAPE** - LANDSCAPE SHALL BE EXAMINED BY THE LANDSCAPE ARCHITECT FOR THE PROJECT.
4. **GEOTECHNICAL** - ENGINEER TO DETERMINE CONSTRUCTION ON PLANT MATERIALS.
5. **EXCAVATED** - SOILS ON SITE IN ACCORDANCE WITH THE PLANS ARE PREPARED FOR THE CONTRACTOR SHALL TILL, PLANT AND COMPOST AS DIRECTED BY THE NUMBER OF TOPSOIL LAYERS TO BE PLACED TO THE DEPTH OF 10" TO 12" SOIL.
6. **DO NOT** PLACE EXCAVATED MATERIALS IN THE EXISTING SOIL, OR EXISTING SOIL IN EXCAVATED AREAS, OR EXISTING SOIL IN EXCAVATED AREAS, OR EXISTING SOIL IN EXCAVATED AREAS.

CALL 2 BUSINESS DAYS IN ADVANCE BEFORE YOU DIG, GRAB, OR EXCAVATE FOR THE MAJORITIES OF UNDERGROUND INFRASTRUCTURE.

**C1.16**



# PLANT SCHEDULE APPLE VALLEY

CODE	SYMBOL	COMMON NAME	SIZE	QUANTITY	QTY
100	+	ACER FRAXINUS (FRAXINUS) / REDBUD	27' DIA. 8' H	7	7
101	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
102	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
103	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
104	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
105	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
106	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
107	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
108	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
109	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
110	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
111	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
112	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
113	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
114	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
115	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
116	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
117	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
118	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
119	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
120	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8

# SYMBOLS

CODE	SYMBOL	COMMON NAME	SIZE	QUANTITY	QTY
100	+	ACER FRAXINUS (FRAXINUS) / REDBUD	27' DIA. 8' H	7	7
101	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
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104	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
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116	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
117	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
118	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
119	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8
120	+	CELESTIALS (CELESTIALS) / BLUE STAR	4' DIA. 8' H	8	8

# GENERAL NOTES

1. PLANTING SHALL BE IN ACCORDANCE WITH THE CITY OF YAKIMA PLANTING SPECIFICATIONS.
2. PLANTING SHALL BE IN ACCORDANCE WITH THE CITY OF YAKIMA PLANTING SPECIFICATIONS.
3. PLANTING SHALL BE IN ACCORDANCE WITH THE CITY OF YAKIMA PLANTING SPECIFICATIONS.
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15. PLANTING SHALL BE IN ACCORDANCE WITH THE CITY OF YAKIMA PLANTING SPECIFICATIONS.
16. PLANTING SHALL BE IN ACCORDANCE WITH THE CITY OF YAKIMA PLANTING SPECIFICATIONS.
17. PLANTING SHALL BE IN ACCORDANCE WITH THE CITY OF YAKIMA PLANTING SPECIFICATIONS.

# KEY NOTES

1. CONCRETE LANDSCAPE CURBING SEE SHEET 13.01, DETAIL 4.
2. BIRCH BACK QUANTITY 61 SEE SPECIFICATIONS SECTION 12.350.
3. SCOTCH PINE QUANTITY 11 SEE SPECIFICATIONS SECTION 12.350.
4. SEE SHEET 13.01 DETAIL 17 FOR TYPICAL POND MATERIALS.
5. ASPHALT WALKING PATH SEE CIVIL.

NORTH

2' DEPTH BARK MULCH PLANTING BEDS TOTAL AREA: 46,280 SF

100' DIA. 11,273 SF

100' DIA. 10,454 SF

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MAY 26 2021

CITY OF YAKIMA

COMMUNITY DEVELOPMENT

PROTOTYPE ELEMENTARY WEST VALLEY SCHOOL DISTRICT

APPLE VALLEY - 7th & 88th

SUMMITVIEW - 6305 W CHEST

YAKIMA, WASHINGTON 9

DOC. INDEX

# B-2

McKay & Spostio

DESIGN WEST

1.01

W YAKIMA AVE

NORTH 88TH AVE

W CHESTNUT AVE

MATCHLINE - SEE SHEET L1.01

DOC. INDEX # B-2

- 2" DEPTH BRONZE MATCH PLANTING BEDS TOTAL AREA: 46,280 SF
- TUBE SOD: 11,573 SF
- TUBE HYDRPOSED: 154,844 SF

PLANT SCHEDULE APPLE VALLEY

TREES	CODE	BOTANICAL / COMMON NAME	SIZE	CONTAINER	QTY
+	AS 720	ASPERULUM FRANKLINI / INCENSED WAX	2 1/2" GAL. MAX	1" GAL	7
+	CE 140	CESTRUM ALABANDICUM / BLOOD THROAT	4 1/2" GAL	1" GAL	21
+	CE 140	CESTRUM ALABANDICUM / BLOOD THROAT	4 1/2" GAL	1" GAL	21
+	CE 140	CESTRUM ALABANDICUM / BLOOD THROAT	4 1/2" GAL	1" GAL	21
+	CE 140	CESTRUM ALABANDICUM / BLOOD THROAT	4 1/2" GAL	1" GAL	21
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+	CE 140	CESTRUM ALABANDICUM / BLOOD THROAT	4 1/2" GAL	1" GAL	21
+	CE 140	CESTRUM ALABANDICUM / BLOOD THROAT	4 1/2" GAL	1" GAL	21

SHRUBS	CODE	BOTANICAL / COMMON NAME	SIZE	CONTAINER	QTY
+	AS 720	ASPERULUM FRANKLINI / INCENSED WAX	2 1/2" GAL. MAX	1" GAL	7
+	CE 140	CESTRUM ALABANDICUM / BLOOD THROAT	4 1/2" GAL	1" GAL	21
+	CE 140	CESTRUM ALABANDICUM / BLOOD THROAT	4 1/2" GAL	1" GAL	21
+	CE 140	CESTRUM ALABANDICUM / BLOOD THROAT	4 1/2" GAL	1" GAL	21
+	CE 140	CESTRUM ALABANDICUM / BLOOD THROAT	4 1/2" GAL	1" GAL	21
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+	CE 140	CESTRUM ALABANDICUM / BLOOD THROAT	4 1/2" GAL	1" GAL	21

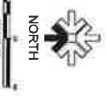
MAY 26 2021

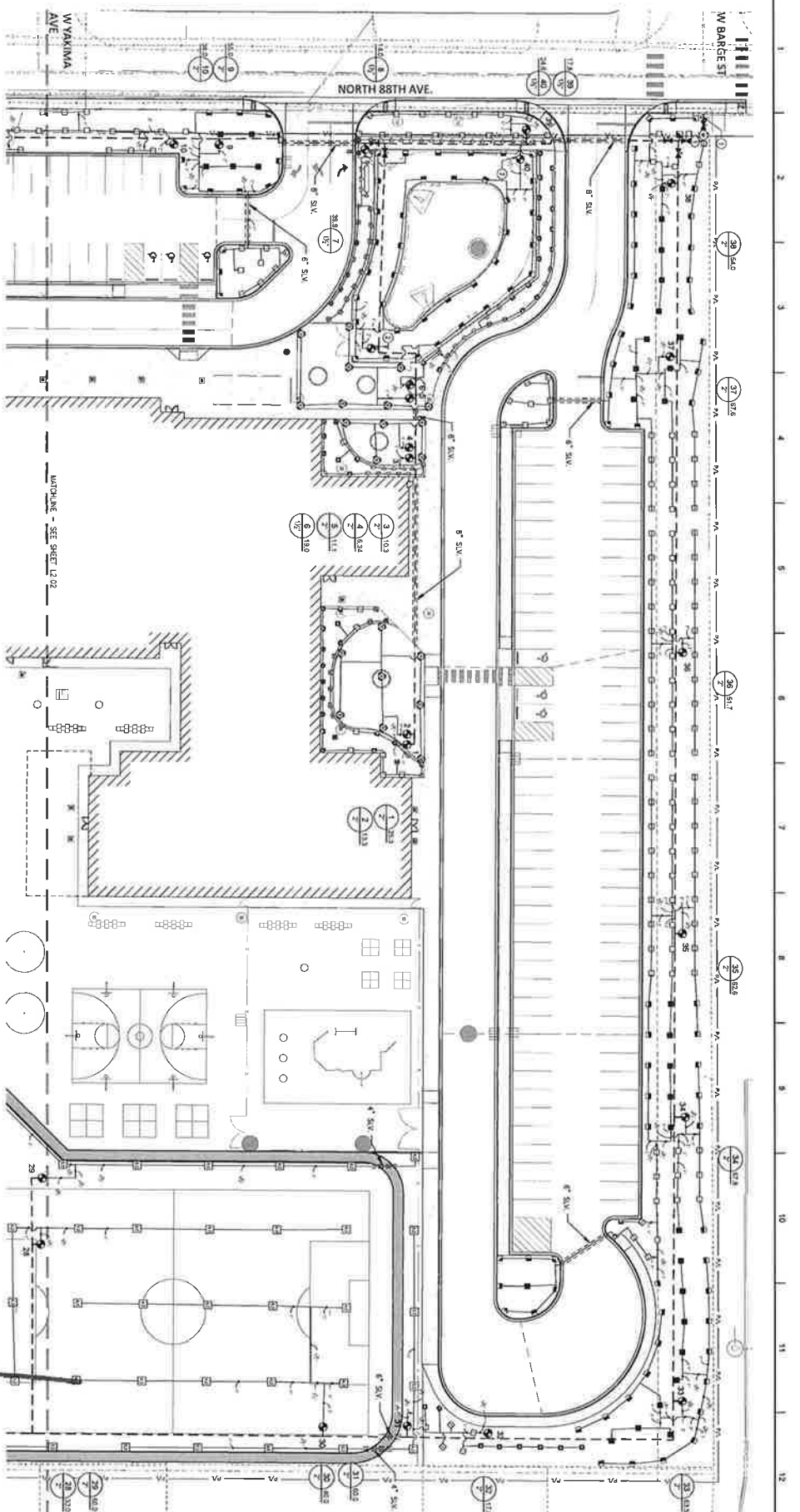
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CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

KEY NOTES

- CONCRETE LANDSCAPE CURBING
- ASPHALT WALKING PATH, SEE CIV.





### IRRIGATION SCHEDULE

STATUS	MANUFACTURER'S DESCRIPTION	TYPE	STATUS
0 0 0 1	HAIRY POCOA-POCOA-CA-5 POCUS GRAY	20	1
0 0 0 0	HAIRY POCOA-POCOA-CA-6 POCUS GRAY	20	2
0 0 0 0	HAIRY POCOA-POCOA-CA-7 POCUS GRAY	20	3
0 0 0 0	HAIRY POCOA-POCOA-CA-8 POCUS GRAY	20	4
0 0 0 0	HAIRY POCOA-POCOA-CA-9 POCUS GRAY	20	5
0 0 0 0	HAIRY POCOA-POCOA-CA-12 POCUS GRAY	20	6
0 0 0 0	HAIRY POCOA-POCOA-CA-13 POCUS GRAY	20	7
0 0 0 0	HAIRY POCOA-POCOA-CA-14 POCUS GRAY	20	8
0 0 0 0	HAIRY POCOA-POCOA-CA-15 POCUS GRAY	20	9
0 0 0 0	HAIRY POCOA-POCOA-CA-16 POCUS GRAY	20	10
0 0 0 0	HAIRY POCOA-POCOA-CA-17 POCUS GRAY	20	11
0 0 0 0	HAIRY POCOA-POCOA-CA-18 POCUS GRAY	20	12
0 0 0 0	HAIRY POCOA-POCOA-CA-19 POCUS GRAY	20	13
0 0 0 0	HAIRY POCOA-POCOA-CA-20 POCUS GRAY	20	14
0 0 0 0	HAIRY POCOA-POCOA-CA-21 POCUS GRAY	20	15
0 0 0 0	HAIRY POCOA-POCOA-CA-22 POCUS GRAY	20	16
0 0 0 0	HAIRY POCOA-POCOA-CA-23 POCUS GRAY	20	17
0 0 0 0	HAIRY POCOA-POCOA-CA-24 POCUS GRAY	20	18
0 0 0 0	HAIRY POCOA-POCOA-CA-25 POCUS GRAY	20	19
0 0 0 0	HAIRY POCOA-POCOA-CA-26 POCUS GRAY	20	20
0 0 0 0	HAIRY POCOA-POCOA-CA-27 POCUS GRAY	20	21
0 0 0 0	HAIRY POCOA-POCOA-CA-28 POCUS GRAY	20	22
0 0 0 0	HAIRY POCOA-POCOA-CA-29 POCUS GRAY	20	23
0 0 0 0	HAIRY POCOA-POCOA-CA-30 POCUS GRAY	20	24
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0 0 0 0	HAIRY POCOA-POCOA-CA-32 POCUS GRAY	20	26
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0 0 0 0	HAIRY POCOA-POCOA-CA-34 POCUS GRAY	20	28
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0 0 0 0	HAIRY POCOA-POCOA-CA-36 POCUS GRAY	20	30
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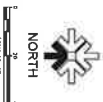
## KEY NOTES

- ① TAP EXISTING POINT OF CONNECTION  
② VALVES SHOWN ON SLOPE OF STORM FACILITY FOR GRAVITY FLOW. LOCATE VALVE OUTSIDE OF STORM FACILITY IN LAWN OR GRASS BED

## GENERAL NOTES

- [illegible]

DOC.  
INDEX  
# B-2

**PROTOTYPE ELEMENTARY  
WEST VALLEY SCHOOL DISTRICT**

APPLE VALLEY - 7 N 88TH  
 WHITEVIEW - 6305 W CHEST  
 YAKIMA, WASHINGTON 9

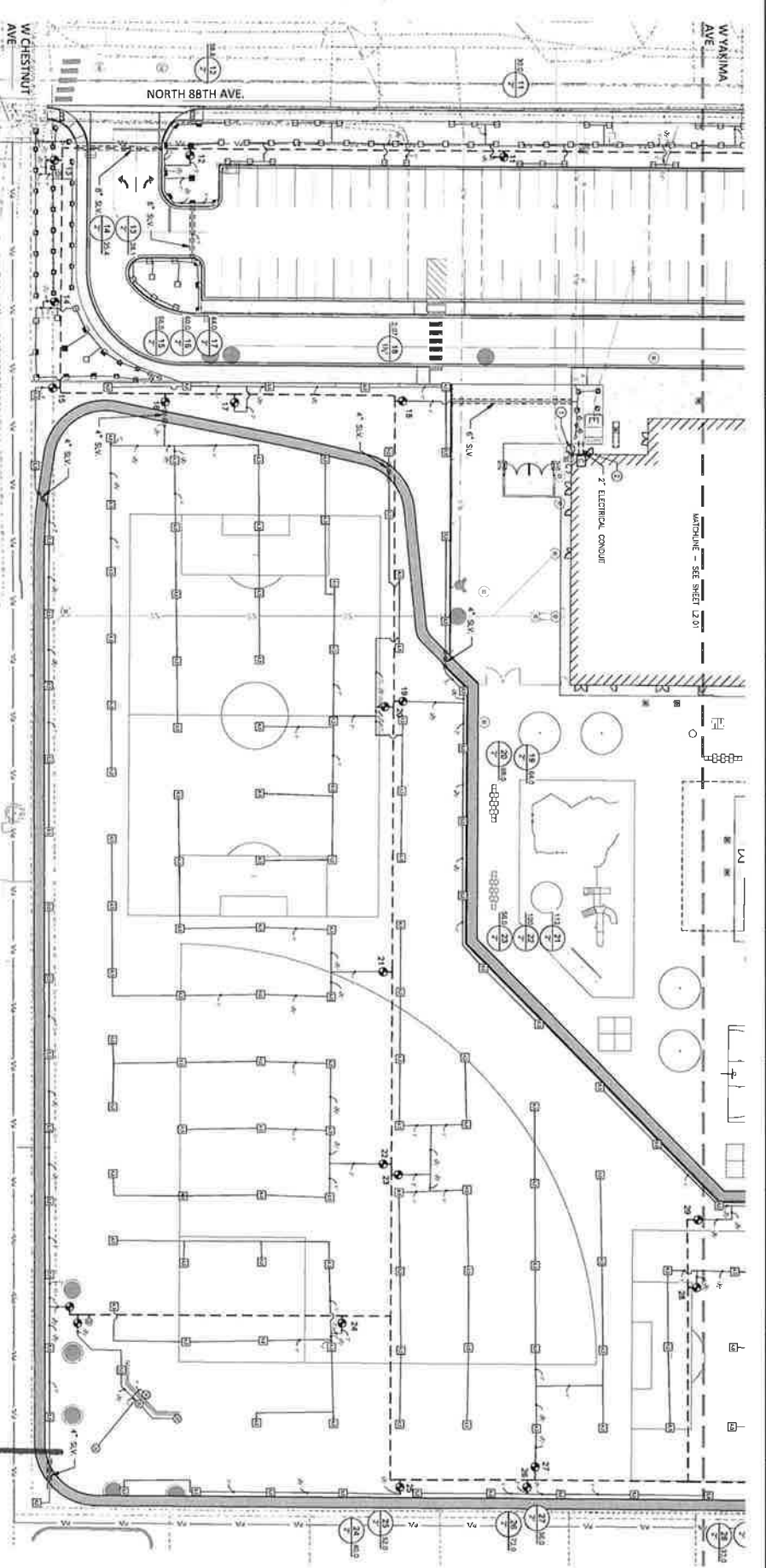
## IRRIGATION PLAN

## L2.01

MackKay &amp; Sposito



**DESIGN WEST**  
ARCHITECTS, P.A.  
• MEMPHIS, TENN. • PALM SPRINGS, CALIF. •  
• ALBUQUERQUE, N.M. • SALT LAKE CITY, UT •  
• SPOKANE, WASH. •



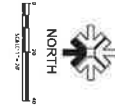
# IRRIGATION SCHEDULE

SYMBOL	MANUFACTURER/DESCRIPTION	QTY	SYMBOL	MANUFACTURER/DESCRIPTION
1	1/2" NPT x 10' PVC PIPE	20	2	1/2" NPT x 10' PVC PIPE
3	1/2" NPT x 10' PVC PIPE	20	4	1/2" NPT x 10' PVC PIPE
5	1/2" NPT x 10' PVC PIPE	20	6	1/2" NPT x 10' PVC PIPE
7	1/2" NPT x 10' PVC PIPE	20	8	1/2" NPT x 10' PVC PIPE
9	1/2" NPT x 10' PVC PIPE	20	10	1/2" NPT x 10' PVC PIPE
11	1/2" NPT x 10' PVC PIPE	20	12	1/2" NPT x 10' PVC PIPE
13	1/2" NPT x 10' PVC PIPE	20	14	1/2" NPT x 10' PVC PIPE
15	1/2" NPT x 10' PVC PIPE	20	16	1/2" NPT x 10' PVC PIPE
17	1/2" NPT x 10' PVC PIPE	20	18	1/2" NPT x 10' PVC PIPE
19	1/2" NPT x 10' PVC PIPE	20	20	1/2" NPT x 10' PVC PIPE
21	1/2" NPT x 10' PVC PIPE	20	22	1/2" NPT x 10' PVC PIPE
23	1/2" NPT x 10' PVC PIPE	20	24	1/2" NPT x 10' PVC PIPE
25	1/2" NPT x 10' PVC PIPE	20	26	1/2" NPT x 10' PVC PIPE
27	1/2" NPT x 10' PVC PIPE	20	28	1/2" NPT x 10' PVC PIPE
29	1/2" NPT x 10' PVC PIPE	20	30	1/2" NPT x 10' PVC PIPE
31	1/2" NPT x 10' PVC PIPE	20	32	1/2" NPT x 10' PVC PIPE
33	1/2" NPT x 10' PVC PIPE	20	34	1/2" NPT x 10' PVC PIPE
35	1/2" NPT x 10' PVC PIPE	20	36	1/2" NPT x 10' PVC PIPE
37	1/2" NPT x 10' PVC PIPE	20	38	1/2" NPT x 10' PVC PIPE
39	1/2" NPT x 10' PVC PIPE	20	40	1/2" NPT x 10' PVC PIPE
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47	1/2" NPT x 10' PVC PIPE	20	48	1/2" NPT x 10' PVC PIPE
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63	1/2" NPT x 10' PVC PIPE	20	64	1/2" NPT x 10' PVC PIPE
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99	1/2" NPT x 10' PVC PIPE	20	100	1/2" NPT x 10' PVC PIPE

RECEIVED  
MAY 26 2021  
CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

KEY NOTES  
1. CONSTRUCTION SHALL BE THE SITE AND UTILITY CONDITIONS AND DIMENSIONS PRIOR TO CONSTRUCTION. NOTY OWNERS REPRESENTATIVE  
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF YAKIMA AND THE WASHINGTON STATE DEPARTMENT OF ECOLOGY.  
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF YAKIMA AND THE WASHINGTON STATE DEPARTMENT OF ECOLOGY.  
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DOC. INDEX  
# B-2



Other/Conditions pg. 1/2 CHUBBY, B-1  
Signature *W. M. Howell* Date 03/27/20

RECEIVED  
MAR 10 2020

CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

A horizontal scale bar with markings at 0, 30, and 60 feet. The text "SCALE IN FEET" is written below the bar.



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### LEGEND

- CRASS PLAY AREA

**KEYED NOTES**

- ☐ 178940/41 - OBSERVED FOR ROAD R/W IN
- ☒ 4-FI DRAINAGE EXISTING; AN 178984/1
- ☒ TRASH ENCLOSURE WITH (2) 4 TO DUMPSTERS
- ☒ CURB, GUTTER AND 5-FT WIDE CONC-R/T "A"
- ☒ SIDEWALK ALONG S/OO, FAVORABLE
- ☒ SOLOOT, READER BOARD, 15 FROM V/VW ( 11.5 TALL X 5.5 WIDE)
- ☒ EXISTING PERIMETER FENCING TO DAMPEN AS IS
- ☒ SITE VEGETATION TRIANGLE, TYPE

SITE INFORMATION  
ADDRESS: 7 N 80TH AVE.  
YUKONIA, WA 98909

PARCEL #:

WEST VALLEY SCHOOL DISTRICT

YAKIMA, WA 98908  
509-972-6001  
ANGELA VONSTEEN

TOTAL AREA= 10 AC  
Z IMP = 49%

PARKING SPACES	138
ADA SPACES	8
<u>TOTAL SPACES</u>	<u>147</u>



圖 1

6

[illegible]

N. 88TH AVE SECTION

①

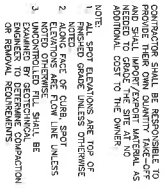
PARKING COURT:

ON 1 SPACE FOR EACH 3 SEATS IN ASSEMBLY

CLASSROOMS: 27

SEATS-225  
PARKING REQUIRED BASED ON ASSEMBLY

MINIMUM 81 STALLS REQUIRED



EG	EXISTING GRADE
FT	FINISHED FLOOR
FG	FINISHED GRADE
TDC	TOP OF CURB
TW	TOP OF WALK
EG	EXISTING GRADE
FT	FINISHED FLOOR
FG	FINISHED GRADE
TDC	TOP OF CURB
TW	TOP OF WALK

MAR 10 2020  
CITY OF YAKIMA  
PLANNING DIV.

FOR THE MEMBER  
Call before you dig.  
CALL 2 BUSINESS DAYS IN ADVANCE BEFORE  
YOU DIG, GRADE, OR EXCAVATE FOR THE  
MARKING OF UNDERGROUND MEMBER  
UTILITIES



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**OVERALL  
GRADING  
PLAN**

DOC.  
INDEX  
# 13-1

**Y SCHOOL DISTRICT / APPLE VALLEY  
ELEMENTARY  
APP#008-21  
(MOD#021-21, APP#001-21)**

## EXHIBIT LIST

## CHAPTER C

### DST Comments

[illegible]

**Crowell, Eric**

---

**To:** Davenport, Joan  
**Subject:** RE: Apple Valley Elementary Path

**From:** Meloy, Randy  
**Sent:** Monday, June 14, 2021 11:01 AM  
**To:** Davenport, Joan <[Joan.Davenport@yakimawa.gov](mailto:Joan.Davenport@yakimawa.gov)>  
**Subject:** Apple Valley Elementary Path

RECEIVED  
JUN 14 2021  
CITY OF YAKIMA  
PLANNING DIV.

Joan,

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.

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.

Thank you

Randy Meloy, P.E.  
Surface Water Engineer  
City of Yakima  
(509) 576-6606

DOC.  
INDEX  
# C-1