

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

EXHIBIT LIST

**CHAPTER E
Public Notices**

DOC INDEX #	DOCUMENT	DATE
E-1	Land Use Action Installation Certificate	08/02/2021
E-2	Notice of Appeal of Administrative Official's Decision & Public Hearing E-2a: Legal Ad E-2b: Press Release and Distribution Email E-2c: Parties and Agencies Notified E-2d: Affidavit of Mailing	07/23/2021
E-3	Decision of MOD#021-21	06/30/2021
E-4	HE Agenda Distribution List	08/05/2021
E-5	HE Agenda & Sign-In Sheet	08/12/2021
E-6	Notice of Hearing Examiner's Decision (See DOC Index# AA-1 for HE Decision) E-6a: Parties and Agencies Notified E-6b: Affidavit of Mailing	08/27/2021
E-7	Notice of Appeal of Hearing Examiner's Decision E-7a: Parties and Agencies Notified E-7b: Affidavit of Mailing	09/15/2021
E-8	Letter of Transmittal to City Clerk	10/20/2021

CITY OF YAKIMA, PLANNING DIVISION

LETTER OF TRANSMITTAL

I, Analilia Núñez, as an employee of the City of Yakima, Planning Division, have transmitted to: Sonya Claar Tee, City Clerk, by hand delivery, the following documents:

1. Mailing labels for West Valley School District/Apple Valley Elementary (APP#008-21) including all labels for the West Valley School District, Perkins Coie LLP, John Manfredi, and e-mail distribution lists for in-house and local media.

2. *Vicinity Map*

Signed this 20th day of October, 2021.



Analilia Núñez
Planning Technician

Received By: *Bochay Treese*

Date: 10/20/2021

DOC.
INDEX
E-8

Nunez, Analilia

From: Nunez, Analilia
Sent: Wednesday, October 20, 2021 4:14 PM
To: Claar Tee, Sonya
Subject: Public Notice for West Valley School District/Apple Valley Elementary APP#008-21
Attachments: In-House Distribution E-mail List_ updated 09.02.2021; Local Media List _09.16.2021

Hi Sonya,

Please have the public hearing notice emailed to these distribution lists: In-house Distribution E-mail List updated 09.02.2021 and Local Media List 09.16.2021

Also, please email the notice to:

Julie Wilson-McNerney, Perkins Coie LLP - jwilsonmcnerney@perkinscoie.com
Peter Finch, West Valley School District - finchp@wvsd208.org
John Manfredi - jcmanfredi@outlook.com

I am bringing down labels shortly.

Thank you,

Analilia Núñez
Planning Technician
City of Yakima Planning Division
p: 509.575.6261
129 North 2nd Street, Yakima, Washington, 98901



Perkins Coie LLP – Julie Wilson-McNerney
1201 Third Ave.
Seattle, WA 98101

West Valley School District – Peter Finch
8902 Zier Rd.
Yakima, WA 98909

John Manfredi
8615 Woodwinds Way
Yakima, WA 98908

DOC.
INDEX
E-8

Project Name: WEST VALLEY SCHOOL DISTRICT / APPLE VALLEY
ELEMENTARY - APPEAL

Site Address: 7 N 88TH AVE

File Number(s): APP#008-21

Proposal: Appeal of the Hearing Examiner's Decision to Yakima City Council (APP#001-21).



VICINITY MAP



Map Disclaimer: Information shown on this map is for planning and illustration purposes only. The City of Yakima assumes no liability for any errors, omissions, or inaccuracies in the information provided or for any action taken, or action not taken by the user in reliance upon any maps or information provided.

Date Created: 10/21/2021

DOC.

INDEX

E-8



AFFIDAVIT OF MAILING

STATE OF WASHINGTON

CITY OF YAKIMA

RE: APP#009-21

WVSD/Apple Valley Elementary

7 N. 88th Ave.

I, Analilia Núñez, as an employee of the City of Yakima Planning Division, have dispatched through the United States Mails, a **Notice of Appeal of Hearing Examiner's Decision**; a true and correct copy of which is enclosed herewith; that said notice was addressed to the applicant and all property owners of record within a radius of 300 feet of subject property; that said property owners are individually listed on the mailing list retained by the Planning Division; and that said notices were mailed by me on this 15th day of September, 2021.

That I mailed said notices in the manner herein set forth and that all of the statements made herein are just and true.



Analilia Núñez
Planning Technician

DOC.
INDEX
E-76

West Valley School District – Peter Finch
8902 Zier Rd.
Yakima, WA 98909

John Manfredi
8615 Woodwinds Way
Yakima, WA 98908

Perkins Coie LLP – Julie Wilson-McNerney
1201 Third Ave.
Seattle, WA 98101

Ntc of Appeal
APP# 008-21
sent 9/15/21

DOC.
INDEX
E-79

In-House Distribution E-mail List			Revised 09/02/2021
Name	Division	E-mail Address	
Silvia Corona	Clerk's Office	Silvia.Corona@yakimawa.gov	
Lisa Maxey	Code Administration	Lisa.Maxey@yakimawa.gov	
Glenn Denman	Code Administration	Glenn.Denman@yakimawa.gov	
John Zabell	Code Administration	John.Zabell@yakimawa.gov	
Kelli Horton	Code Administration	Kelli.Horton@yakimawa.gov	
Pedro Contreras	Code Administration	Pedro.Contreras@yakimawa.gov	
Suzanne DeBusschere	Code Administration	Suzanne.Debusschere@yakimawa.gov	
Tony Doan	Code Administration	Tony.Doan@yakimawa.gov	
Joan Davenport	Community Development	Joan.Davenport@yakimawa.gov	
Rosalinda Ibarra	Community Development	Rosalinda.Ibarra@yakimawa.gov	
Bill Preston	Engineering	Bill.preston@yakimawa.gov	
Dan Riddle	Engineering	Dan.Riddle@yakimawa.gov	
Aaron Markham	Fire	Aaron.markham@yakimawa.gov	
Jeremy Rodriguez	Fire	Jeremy.Rodriguez@yakimawa.gov	
Sara Watkins	Legal	Sara.Watkins@yakimawa.gov	
Archie Matthews	ONDS	Archie.Matthews@yakimawa.gov	
Joseph Calhoun	Planning	Joseph.Calhoun@yakimawa.gov	
Analilia Nunez	Planning	Analilia.nunez@yakimawa.gov	
Matt Murray	Police	Matthew.murray@yakimawa.gov	
Scott Schafer	Public Works	Scott.Schafer@yakimawa.gov	
Loretta Zammarchi	Refuse	Loretta.Zammarchi@yakimawa.gov	
Randy Layman	Refuse	Randy.Layman@yakimawa.gov	
Gregory Story	Transit	Gregory.Story@yakimawa.gov	
James Dean	Utilities	James.Dean@yakimawa.gov	
Dana Kallevig	Wastewater	Dana.Kallevig@yakimawa.gov	
Randy Meloy	Wastewater	Randy.Meloy@yakimawa.gov	
Dave Brown	Water/Irrigation	David.Brown@yakimawa.gov	
Mike Shane	Water/Irrigation	Mike.Shane@yakimawa.gov	

Outside Distribution		
Name	Address	Included In Mailing?
Pacific Power Attn: Estimating Department (<i>Subdivision notices ONLY</i>)	500 N Keys Rd, Yakima, WA 98901	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Type of Notice: Notice of Appeal
 File Number(s): APP#008-21
 Date of Mailing: 9/15/21

DOC.
 INDEX
 # E-79

Nunez, Analilia

From: Nunez, Analilia
Sent: Wednesday, September 15, 2021 3:56 PM
To: Brown, David; Calhoun, Joseph; Contreras, Pedro; Corona, Silvia; Davenport, Joan; Dean, James; DeBusschere, Suzanne; Denman, Glenn; Doan, Tony; Horton, Kelli; Ibarra, Rosalinda; Kallevig, Dana; Layman, Randy; Markham, Aaron; Matthews, Archie; Maxey, Lisa; Meloy, Randy; Murray, Matthew; Nunez, Analilia; Preston, Bill; Riddle, Dan; Rodriguez, Jeremy; Schafer, Scott; Shane, Mike; Story, Gregory; Watkins, Sara; Zabell, John; Zammarchi, Loretta
Cc: Crowell, Eric
Subject: NOTIFICATION OF APPEAL_WVSD - APP#008-21
Attachments: NOTIFICATION OF APPEAL_WVSD - APP#008-21.pdf

Attached you will find a Notice of Appeal for the above-mentioned project. If you have any questions about the project please contact assigned planner, Eric Crowell at eric.crowell@yakimawa.gov



Analilia Núñez
Planning Technician
City of Yakima Planning Division
p: 509.575.6261
129 North 2nd Street, Yakima, Washington, 98901



DEPARTMENT OF COMMUNITY DEVELOPMENT

Joan Davenport, AICP, Director

Planning Division

Joseph Calhoun, Manager

129 North Second Street, 2nd Floor, Yakima, WA 98901

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

**NOTIFICATION OF APPEAL
HEARING EXAMINER'S DECISION
September 15, 2021**

City File APP#008-21

This notice is being provided to parties of record and the appellant that a timely appeal was filed West Valley School District #208 on September 10, 2021 for the Hearing Examiner's Decision on APP#001-21/MOD#021-21. Copies of the Notice of Appeal and any written argument or memorandum of authorities accompanying the Notice of Appeal may be obtained from the Planning Division.

In accordance with YMC § 15.16.050(B), **"All parties of record wishing to respond to the appeal may submit a written argument or memorandum to the legislative body within thirty days from the date that the notice is mailed; and any written argument or memorandum shall not include the presentation of new evidence and shall be based only upon the facts presented to the examiner."**

Please submit written argument or memorandum of authority to:

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

Upon completion of the thirty-day submittal period for submission of any written argument or memorandum, the appellant at their expense may obtain copies of any such submissions, and shall be provided a fifteen-day rebuttal period, starting on the thirty-first day from the date of mailing.

*Please be certain to reference the file number or appellant's name in your correspondence.
(APP#008-21 –West Valley School District #208)*

Public Notice Meeting on Appeal:

Subsequent to the submission and rebuttal periods discussed above and outlined below, the record will be transferred to the Legislative Body. A separate notice to identify the date and time of the City Council's public meeting to consider the appeal will be sent to the appellant and parties of record.

**DOC.
INDEX
E-7**

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

Eric M. Crowell

Eric Crowell
Senior Planner

Applicable Dates:

Date of Mailing: September 15, 2021

30 day submittal for written argument or memorandum ends: October 15, 2021 at 5:00 pm

15 day rebuttal period begins: October 18, 2021

15 day rebuttal period ends: November 2, 2021 at 5:00 pm

Enclosures: Application of Appeal

**DOC.
INDEX**

E-7



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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.

DOC.
INDEX
E-7

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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

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

153770104 2

DOC.
INDEX

E-7

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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.
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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
26

27 3. Attorneys for the Appellant are Kristine R. Wilson and Julie Wilson-
28 McNerney, Perkins Coie, 1201 Third Avenue, Seattle, Washington 98101-3099.
29

30 4. Attached to this Notice of Appeal as Exhibit A is the originally appealed-
31 from decision of the Administrative Official ("City Decision"), dated June 30, 2021 and as
32 Exhibit B, is the Hearing Examiner's Decision, dated August 26, 2021, that is the subject of
33 this appeal (the "Hearing Examiner's Decision"). Attached as Exhibit C is a statement from
34 the appellant in accordance with Yakima Municipal Code ("YMC") 16.08.025.A.3.
35
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39 5. Appellant has standing to initiate this appeal as a party of record per YMC
40 16.08.025.A. Appellant in this matter is the applicant whose modification request was
41 denied by the City of Yakima ("City") and who now is appealing the Hearing Examiner's
42 decision to affirm the City's denial of the School District's modification request.
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NOTICE OF APPEAL – 2

153770104.2

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DOC.
INDEX
E-7

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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

153770104.2

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DOC.
INDEX

E-7

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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
6 adjacent properties include only slope stability, drainage, and potential erosion problems
7
8 resulting from the grading. Yet, the City's only stated basis for denying the School
9
10 District's modification request—and the Hearing Examiner's basis for affirming the
11
12 Administrative Official's finding—was neighbors' concerns regarding the aesthetic and
13
14 visual impacts of the higher playfield elevation on their adjacent properties. See Hearing
15
16 Examiner Decision at 10. But impacts to aesthetics and visual quality are an improper basis
17
18 to support an "adverse effects" finding pursuant to the Washington State Building Code. By
19
20 upholding the Administrative Official's finding on the basis of the neighbor's aesthetics and
21
22 visual concerns, the Hearing Examiner improperly applied a higher standard to the School
23
24 District's modification request than would have been applied to a grading permit for the
25
26 same work. The City's record shows that grading would not have adverse effects based on
27
28 the environmental review, and the City's surface water engineer's analysis shows that the
29
30 site does not create any site stability, erosion, or drainage impacts to adjacent properties.
31
32 Because there are no slope stability or erosion concerns resulting from the increased
33
34 playfield elevation, the Hearing Examiner's determination that the grading would result in
35
36 adverse effects is not supported by substantial evidence.

37
38 d. The Hearing Examiner committed an error of law in affirming the
39
40 Administrative Official's application of a higher standard to the denial of the grading
41
42 modification than would have been applied to the initial grading permit review.

43
44 e. The Hearing Examiner committed an error of law and exceeded his authority
45
46 in holding that the School District must either successfully appeal the Administrative Minor
47
48 Modification decision, or successfully obtain approval of the grading increase through a
49
50 Type (3) review process. Hearing Examiner Decision at 12. The School District went
51
52 through the Type (3) review process for the demolition and elementary school rebuilding

NOTICE OF APPEAL – 4

153770104.2

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DOC.

INDEX

E-7

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CITY OF YAKIMA
PLANNING DIV.

1 project, as this proposed use triggers a Type (3) review process. *See* YMC 15.15.020. Mere
2 changes in site elevation should not require a whole new Type (3) review process and a
3 separate approval on the same scale as the entire school rebuilding project.
4

5
6 f. The Hearing Examiner committed an error of law and exceeded his authority
7 in affirming the Administrative Official's determination that the School District may be
8 required to regrade the site. Hearing Examiner Decision at 12-13. The Hearing Examiner
9 held that the "nexus and proportionality test" does not apply here because the Administrative
10 Official's decision "leaves unaffected the grading contour requirements of the approved
11 2020 building permit which was not appealed and which will remain as the grading contour
12 requirements for the site." Hearing Examiner Decision at 13. However, the Hearing
13 Examiner failed to consider the significant adverse effect on the School District, the
14 taxpayers, and the elementary school students by requiring the School District to regrade the
15 site consistent with the approved 2020 building permit grading plans. By so holding, the
16 Hearing Examiner (and the Administrative Official) deemed that the handful of neighbors'
17 aesthetic concerns trump the exorbitant cost of regrading the site both to the School District
18 and to the City taxpayers. Accordingly, the imposition of a requirement to regrade the site is
19 contrary to the nexus and proportionality test. The City may only impose requirements that
20 are proportionate to the impacts of the proposed action. Therefore, the Hearing Examiner
21 and Administrative Official lack authority to require the school district to regrade the site.
22

23
24
25 7. Appellant seeks the following relief from the City Council:
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- 27 a. For an Order reversing the Hearing Examiner's decision with respect to
28 grading.
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30 b. For such other and further relief as the City Council deems just and equitable.
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NOTICE OF APPEAL – 5

153770104.2

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DOC.

INDEX

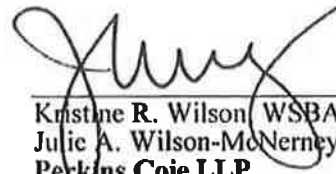
E-7

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CITY OF YAKIMA
PLANNING DIV

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4 DATED: September 10, 2021
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Kristine R. Wilson, WSBA No. 33152
Julie A. Wilson-McNerney, WSBA No. 46585
Perkins Coie LLP
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Phone: 206.359.8000
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KRWilson@perkinscoie.com
JWilsonMcNerney@perkinscoie.com

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

NOTICE OF APPEAL – 6

153770104.2

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Fax: 206.359.9000

DOC.
INDEX
E-17

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CITY OF YAKIMA
PLANNING DIV.

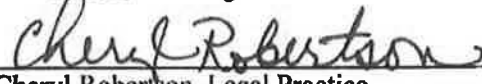
CERTIFICATE OF SERVICE

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 **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

NOTICE OF APPEAL – 7

153770104.2

Perkins Cole LLP
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Phone: 206.359.8000
Fax: 206.359.9000

DOC.

INDEX

E-17

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CITY OF YAKIMA
PLANNING DIV.

EXHIBIT A

DOC.
INDEX

F-7

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CITY OF YAKIMA
PLANNING DIV.



DEPARTMENT OF COMMUNITY DEVELOPMENT
Joan Davenport, AICP, Director

Planning Division
Joseph Calhoun, Manager
129 North Second Street, 2nd 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**

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

I. DESCRIPTION OF REQUEST:

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

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

III. FACTS:

A. Processing

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



DOC.
INDEX

E-17

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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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SEP 10 2021

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.

RECEIVED

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:
- a. One stockpile of lead and arsenic soil remains onsite and is being used to finish the elevation of soil located beneath the fabric cap. Some surplus soil from this stockpile maybe removed from the site. The stockpile has been characterized and was below the dangerous waste threshold.
 - b. All lead and arsenic contaminated soil was removed from stormwater infiltration areas.
 - c. Lead and arsenic contaminated soil remaining in building footprint, asphalt parking, or concrete side walk areas have been capped with gravel and either concrete or asphalt.
 - d. Lead and arsenic contaminated soil remaining grass or landscaping areas is currently being covered with an orange geotextile fabric and clean soil.
 - e. Following clean soil placement, either sod will be added to the grass surfaced areas.
- D. This modification is being requested in order to add a five-foot-wide walking path around the perimeter of the playfield, revised backstop and goalpost locations, a slight reduction in asphalt for the playground, modified site grading, and installation of sitescreening in some locations.

RECEIVED

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.

RECEIVED

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

7
DOC.
INDEX
E-7

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

E-7



DEPARTMENT OF COMMUNITY DEVELOPMENT
Joan Davenport, AICP, Director

Planning Division
Joseph Calhoun, Manager
129 North Second Street, 2nd 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. 88th 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.

Eric M. Crowell

Eric Crowell
Associate Planner

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



DOC.
INDEX

E-7

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

E-7

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.

RECEIVED

SEP 10 21

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

RECEIVED

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*).

RECEIVED

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 sitescreeing, 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.

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

5

DOC.
INDEX
E-7

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.

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SEP 10 2021

CITY OF YAKIMA
PLANNING DIV.

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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 sitescreeing 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

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CITY OF YAKIMA
PLANNING DIV.

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AUG 26 2021

CITY OF YAKIMA
PLANNING DIV.

elevation that are near enough to the adjacent neighbors to significantly diminish the effectiveness of their sitescreeing. 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

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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

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SEP 10 2021

CITY OF YAKIMA
PLANNING DIV

RECEIVED

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

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SEP 10 2021

CITY OF YAKIMA
PLANNING DIV.

RECEIVED

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

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SEP 10 2021

CITY OF YAKIMA
PLANNING DIV

RECEIVED

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.

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SEP 10 2021

CITY OF YAKIMA
PLANNING DIV.

RECEIVED

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 26th day of August, 2021.



Gary M. Cuillier, Hearing Examiner

RECEIVED

SEP 10 2021

**CITY OF YAKIMA
PLANNING DIV.**

EXHIBIT C

**DOC.
INDEX**

E-7

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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:

APP#001-21, MOD#021-21

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

DECLARATION OF DR. PETER FINCH

Appellant,

v.

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

Respondent.

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

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

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DOC.
INDEX
E-7

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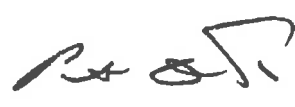
SEP 10 2021

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.
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12 Dated this 10th day of September, 2021, at Yakima, Washington.
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25 _____
26 Dr. Peter Finch, Superintendent
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DECLARATION OF DR. PETER FINCH - 2

153805538.1

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

DOC.

INDEX

E-7

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SEP 10 2021

CITY OF YAKIMA
PLANNING DIV.

CERTIFICATE OF SERVICE

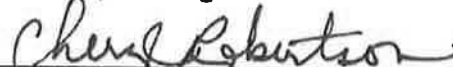
I certify under penalty of perjury under the laws of the State of Washington that on the date indicated below, I caused a true and correct copy of the foregoing

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

DECLARATION OF DR. PETER FINCH - 3

153805538.1

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

DOC.
INDEX
E-17

AFFIDAVIT OF MAILING

STATE OF WASHINGTON

CITY OF YAKIMA

RE: **APP#001-21**

WVSD/Apple Valley Elementary

7 N. 88th Ave.

I, Analilia Núñez, as an employee of the City of Yakima Planning Division, have dispatched through the United States Mails, a **Notice of Hearing Examiner's Decision**; a true and correct copy of which is enclosed herewith; that said notice was addressed to the applicant, parties of record, and all property owners of record within a radius of 300 feet of subject property; that said property owners are individually listed on the mailing list retained by the Planning Division; and that said notices were mailed by me on the 27th day of **August, 2021**

That I mailed said notices in the manner herein set forth and that all of the statements made herein are just and true.



Analilia Núñez
Planning Technician

DOC.
INDEX
E-46

West Valley School District – Peter Finch
8902 Zier Rd.
Yakima, WA 98909

John Manfredi
8615 Woodwinds Way
Yakima, WA 98908

Perkins Coie LLP – Julie Wilson-McNerney
1201 Third Ave.
Seattle, WA 98101

APP#001-21
NOTICE OF HE DECISION
sent 8/27/2

DOC.
INDEX
E-69

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Analilia Nunez	Planning	Analilia.nunez@yakimawa.gov	
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Randy Layman	Refuse	Randy.Layman@yakimawa.gov	
Gregory Story	Transit	Gregory.Story@yakimawa.gov	
James Dean	Utilities	James.Dean@yakimawa.gov	
Dana Kallevig	Wastewater	Dana.Kallevig@yakimawa.gov	
Randy Meloy	Wastewater	Randy.Meloy@yakimawa.gov	
Dave Brown	Water/Irrigation	David.Brown@yakimawa.gov	
Mike Shane	Water/Irrigation	Mike.Shane@yakimawa.gov	

Outside Distribution		
Name	Address	Included In Mailing?
Pacific Power Attn: Estimating Department (Subdivision notices ONLY)	500 N Keys Rd, Yakima, WA 98901	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Type of Notice: NOTICE OF HE DECISION

File Number(s): APP#001-21

Date of Mailing: 8/27/21

DOC.
INDEX
E-6.9

Nunez, Analilia

From: Nunez, Analilia
Sent: Friday, August 27, 2021 4:00 PM
To: Brown, David; Calhoun, Joseph; Contreras, Pedro; Corona, Silvia; Davenport, Joan; Dean, James; DeBusschere, Suzanne; Denman, Glenn; Doan, Tony; Horton, Kelli; Ibarra, Rosalinda; Kallevig, Dana; Layman, Randy; Markham, Aaron; Matthews, Archie; Maxey, Lisa; Meloy, Randy; Murray, Matthew; Nunez, Analilia; Preston, Bill; Riddle, Dan; Rodriguez, Jeremy; Schafer, Scott; Shane, Mike; Story, Gregory; Watkins, Sara; Zabell, John; Zammarchi, Loretta
Cc: Crowell, Eric
Subject: Notification of HE Decision_West Valley School District - APP#001-21
Attachments: Notification of HE Decision_West Valley School District - APP#001-21.pdf

Attached is a Notice of the Hearing Examiner's decision regarding the above-entitled project. If you have any questions about this proposal, please contact assigned planner Eric Crowell at eric.crowell@yakimawa.gov.



Analilia Núñez
Planning Technician
City of Yakima Planning Division
p: 509.575.6261
129 North 2nd Street, Yakima, Washington, 98901



DEPARTMENT OF COMMUNITY DEVELOPMENT

Joan Davenport, AICP, Director

Planning Division

Joseph Calhoun, Manager

129 North Second Street, 2nd Floor, Yakima, WA 98901

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

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. 88th 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.

Eric M. Crowell

Eric Crowell
Associate Planner

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



**DOC.
INDEX**

E-6



DEPARTMENT OF COMMUNITY DEVELOPMENT

Joan Davenport, AICP, Director

Planning Division

Joseph Calhoun, Manager

129 North Second Street, 2nd Floor, Yakima, WA 98901

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

**CITY OF YAKIMA
HEARING EXAMINER
AGENDA**

Thursday, August 12, 2021

Beginning at 9:00 a.m.

I. CALL TO ORDER

II. INTRODUCTION

II. PUBLIC HEARING

A. JULIO ARREOLA

04/30/2021 NCF#001-21

PLANNER: JOSEPH CALHOUN

ADDRESS: 303 CHALMERS ST

REQUEST: Expansion of a non-conforming use for loading and unloading vehicles at an existing automotive recycling yard in the GC zoning district.

**B. WEST VALLEY SCHOOL DISTRICT / APPLE VALLEY
ELEMENTARY**

07/14/2021 APP#001-21

PLANNER: ERIC CROWELL

MOD#021-21

ADDRESS: 7 N 88TH AVENUE

REQUEST: Appeal of the Administrative Official's Decision for MOD#021-21, a modification to an existing site plan to add a 5-ft wide walking path around the perimeter of the playfield at Apple Valley Elementary in the R-1 zoning district.

IV. ADJOURNMENT

The staff recommendation report on the listed project(s) is available online at: www.buildingyakima.com



**DOC.
INDEX**

E-S



SIGN-IN SHEET

City of Yakima HEARING EXAMINER
City Hall Council Chambers
Thursday August 12, 2021
Beginning at 9:00 a.m.



Public Hearings

CASE	FILE #	PROJECT NAME	SITE ADDRESS
A.	NCF#001-21	JULIO ARREOLA	303 CHALMERS ST
B.	APP#001-21	WEST VALLEY SCHOOL DISTRICT / APPLE VALLEY ELEMENTARY	7 N 88TH AVENUE

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DOC.
INDEX
E-5

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Sent 8/5/21

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INDEX
E-4**



DEPARTMENT OF COMMUNITY DEVELOPMENT

Joan Davenport, AICP, Director

Planning Division

Joseph Calhoun, Manager

129 North Second Street, 2nd 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

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

I. DESCRIPTION OF REQUEST:

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

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

III. FACTS:

A. Processing

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

DOC.
INDEX
E-3

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;

- 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.

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

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.

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*

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.

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.

AFFIDAVIT OF MAILING

STATE OF WASHINGTON

CITY OF YAKIMA

RE: APP#001-21

West Valley School District

7 N. 88th Ave.

I, Analilia Núñez, as an employee of the City of Yakima, Planning Division, have dispatched through the United States Mails, a **Notice of Appeal of Administrative Official's & Public Hearing**. A true and correct copy of which is enclosed herewith; that said notice was addressed to the applicant, appellant, all parties of record, and all property owners of record within a radius of 300 feet of subject property, that said property owners are individually listed on the mailing list retained by the Planning Division, and that said notices were mailed by me on this **23rd** day of July, 2020.

That I mailed said notices in the manner herein set forth and that all of the statements made herein are just and true.



Analilia Núñez

Planning Technician

DOC.
INDEX
E-2d

Parties of Record – WVSD/Apple Valley School District – APP#008-21

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Type of Notice: Notice of Appeal : Public Hearing
 File Number(s): APP#001-21
 Date of Mailing: 7/23/21

**DOC.
INDEX
E2-C**

Nunez, Analilia

From: Nunez, Analilia
Sent: Friday, July 23, 2021 3:23 PM
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Cc: Calhoun, Joseph; Watkins, Sara; Crowell, Eric; Denman, Glenn
Subject: NOTICE OF APPEAL & PUBLIC HEARING_WVSD - APP#001-21
Attachments: NOTICE OF APPEAL & PUBLIC HEARING_WVSD - APP#001-21.pdf

Good afternoon,

Thank you for your interest in this project. In accordance with YMC Ch. 16.08, the notice has been mailed to the parties of record. For your convenience a courtesy copy of the notice is attached. The complete record is available for viewing at Yakima City Hall – 129 N. 2nd St.

Thank you,



Analilia Núñez
Planning Technician
City of Yakima Planning Division
p: 509.575.6261
129 North 2nd Street, Yakima, Washington, 98901

Nunez, Analilia

From: Nunez, Analilia
Sent: Friday, July 23, 2021 3:24 PM
To: Brown, David; Calhoun, Joseph; Contreras, Pedro; Corona, Silvia; Davenport, Joan; Dean, James; DeBusschere, Suzanne; Denman, Glenn; Doan, Tony; Horton, Kelli; Ibarra, Rosalinda; Kallevig, Dana; Layman, Randy; Markham, Aaron; Matthews, Archie; Maxey, Lisa; Meloy, Randy; Murray, Matthew; Preston, Bill; Riddle, Dan; Rodriguez, Jeremy; Rossignol, Linda; Schafer, Scott; Shane, Mike; Story, Gregory; Watkins, Sara; Zabell, John; Zammarchi, Loretta; Brown, Michael; Davido, Sean; 'El Mundo'; 'El Sol de Yakima'; Fannin, John; 'KAPP TV News'; 'KBBO-KRSE Radio - manager'; 'KDNA Radio - Francisco Rios'; 'KEPR TV News'; 'KIMA TV News'; 'KIT News'; 'KIT/KATS/DMVW/KFFM - Lance Tormey'; 'KNDO TV News'; 'KNDU TV News'; 'KUNW-TV Univision'; 'KVEW TV News'; 'La Casa Hogar'; 'La Voz'; Lozano, Bonnie; 'NWCN News'; 'NWPR - Anna King'; 'Randy Luvaas - Yakima Business Times'; 'RCDR - Maria DJ Rodriguez'; 'Tu Decides - Albert Torres'; 'West Valley School District - Angela Watts'; 'Yakima Herald Republic - Mai Hoang'; 'Yakima Herald Republic Newspaper'; 'Yakima School District - Stacey Locke'; 'Yakima School District - Trevor Greene'; 'Yakima Valley Business Times'; Beehler, Randy; 'Gary Cuillier'; 'Kevin Richardson - Legal Secretary for Gary Cullier'; 'Pat Spurgin (pds@spurginlawoffice.com)'
Cc: Crowell, Eric
Subject: REVISED NOTICE OF APPEAL & PUBLIC HEARING - WVSD - APP#001-21
Attachments: NOTICE OF APPEAL & PUBLIC HEARING_WVSD - APP#001-21.pdf

Attached is a Revised Notice of Appeal and Public Hearing regarding the above-entitled project. If you have any questions about this proposal, please contact assigned planner Eric Crowell at eric.crowell@yakimawa.gov. Thank you!

From: Nunez, Analilia
Sent: Friday, July 23, 2021 2:38 PM
To: Brown, David <David.Brown@yakimawa.gov>; Calhoun, Joseph <Joseph.Calhoun@YAKIMAWA.GOV>; Contreras, Pedro <Pedro.Contreras@YAKIMAWA.GOV>; Corona, Silvia <Silvia.Corona@yakimawa.gov>; Davenport, Joan <Joan.Davenport@yakimawa.gov>; Dean, James <James.Dean@yakimawa.gov>; DeBusschere, Suzanne <suzanne.debusschere@yakimawa.gov>; Denman, Glenn <Glenn.Denman@yakimawa.gov>; Doan, Tony <Tony.Doan@YAKIMAWA.GOV>; Horton, Kelli <Kelli.Horton@yakimawa.gov>; Ibarra, Rosalinda <Rosalinda.Ibarra@yakimawa.gov>; Kallevig, Dana <Dana.Kallevig@yakimawa.gov>; Layman, Randy <Randy.Layman@yakimawa.gov>; Markham, Aaron <aaron.markham@yakimawa.gov>; Matthews, Archie <Archie.Matthews@yakimawa.gov>; Maxey, Lisa <Lisa.Maxey@YAKIMAWA.GOV>; Meloy, Randy <Randy.Meloy@yakimawa.gov>; Murray, Matthew <matt.murray@yakimawa.gov>; Nunez, Analilia <analilia.nunez@yakimawa.gov>; Preston, Bill <Bill.Preston@yakimawa.gov>; Riddle, Dan <Dan.Riddle@yakimawa.gov>; Rodriguez, Jeremy <Jeremy.Rodriguez@yakimawa.gov>; Rossignol, Linda <Linda.Rossignol@yakimawa.gov>; Schafer, Scott <Scott.Schafer@yakimawa.gov>; Shane, Mike <Mike.Shane@yakimawa.gov>; Story, Gregory <Gregory.Story@yakimawa.gov>; Watkins, Sara <Sara.Watkins@YAKIMAWA.GOV>; Zabell, John <John.Zabell@yakimawa.gov>; Zammarchi, Loretta <Loretta.Zammarchi@YAKIMAWA.GOV>; Brown, Michael <Michael.Brown@yakimawa.gov>; Davido, Sean <Sean.Davido@yakimawa.gov>; El Mundo <info@elmundous.com>; El Sol de Yakima <gibanez@yakimaherald.com>; Fannin, John <John.Fannin@YAKIMAWA.GOV>; KAPP TV News <kappnews@kapptv.com>; KBBO-KRSE Radio - manager <kellyg@yakimaradiogroup.com>; KDNA Radio - Francisco Rios <frios@kdna.org>; KEPR TV News <newsroom@keprtv.com>; KIMA TV News <tips@kimatv.com>; KIT News <kitnews@townsquaremedia.com>; KIT/KATS/DMVW/KFFM - Lance Tormey <lancetormey@townsquaremedia.com>;

KNDO TV News <news@kndo.com>; KNDU TV News <news@kndu.com>; KUNW-TV Univision <noticias@kunwtn.com>; KVEW TV News <kvewnews@kvewtv.com>; La Casa Hogar <info@lacasahogar.org>; La Voz <lavoznewspaper@gmail.com>; Lozano, Bonnie <Bonnie.Lozano@yakimawa.gov>; NWCN News <nwnnews@nwcen.com>; NWPR - Anna King <aking@wsu.edu>; Randy Luvaas - Yakima Business Times <rluvaas@yvpub.com>; RCDR - Maria DJ Rodriguez <mdjrodriguez@rcdr.biz>; Tu Decides - Albert Torres <albert@tudecidesmedia.com>; West Valley School District - Angela Watts <watts@wvds208.org>; Yakima Herald Republic - Mai Hoang <maihoang@yakimaherald.com>; Yakima Herald Republic Newspaper <news@yakimaherald.com>; Yakima School District - Stacey Locke <locke.stacey@ysd7.org>; Yakima School District - Trevor Greene <greene.trevor@ysd7.org>; Yakima Valley Business Times <news@yvpub.com>; YPAC - Randy Beehler <rbeehler@ci.yakima.wa.us>; Gary Cuillier <gary@cuillierlaw.com>; Kevin Richardson - Legal Secretary for Gary Cullier <kevin@cuillierlaw.com>; Pat Spurgin (pds@spurginlawoffice.com) <pds@spurginlawoffice.com>

Cc: Crowell, Eric <Eric.Crowell@YAKIMAWA.GOV>

Subject: NOTICE OF APPEAL & PUBLIC HEARING - WVSD - APP#001-21

Attached is a Notice of Appeal and Public Hearing regarding the above-entitled project. If you have any questions about this proposal, please contact assigned planner Eric Crowell at eric.crowell@yakimawa.gov. Thank you!



Analilia Núñez
Planning Technician
City of Yakima Planning Division
p: 509.575.6261
129 North 2nd Street, Yakima, Washington, 98901

**CITY OF YAKIMA
NOTICE OF APPEAL OF
ADMINISTRATIVE
OFFICIAL'S DECISION &
PUBLIC HEARING**

DATE: 7/23/2021; **City File #:** APP#001-21; This notice is being provided to parties of record, the applicant, and the appellant that a timely appeal was filed by West Valley School District on 07/14/2021 for the Administrative Official's Decision on MOD#021-21 regarding the requested site grading modifications. The decision approved the placement of a five-foot-wide walking path around the perimeter of the playfield, revised backstop and goal-post locations, reduction in asphalt for the playground, and installation of sitescreening, subject to conditions, but denied the regrading of the site, in the R-1 zoning district. The subject property is located at 7 N. 88th Ave., Yakima, WA 98908. In accordance with YMC § 15.16.040(D), "The [Planning] division shall: Set a reasonable time and place for the hearing of the appeal; and, Provide a notice of appeal and public hearing to the official whose decision is being appealed and parties entitled to notice of the decision, including posting of property and published notice at least ten days prior to the hearing." **Appeal Hearing:** The Hearing Examiner will hold a public hearing on **August 12, 2021 at 9:00 a.m.** in the

City Council Chambers at 129 N. 2nd Street, Yakima, WA, 98901. In accordance with YMC 15.16.040(G), "Testimony given during the appeal shall be limited to those points cited in the appeal application. At the conclusion of the hearing, the Hearing Examiner will issue his written decision within ten working days unless a longer period is mutually agreed to by the applicant and the examiner." **Final Decision:** In accordance with YMC § 16.08.108 (G), "Except as otherwise provided, all appeal decisions by the hearing examiner shall be final and conclusive on all parties unless appealed to the legislative body pursuant to this chapter." For further information or assistance you may contact Eric Crowell, Associate Planner, at (509) 576-6736, or email to: eric.crowell@yakimawa.gov.

(982270) July 23, 2021

**DOC.
INDEX**

E-24

YAKIMA HERALD-REPUBLIC

WE TELL YOUR STORIES YAKIMAHERALD.COM

El Sol de Yakima

-Ad Proof-

This is the proof of your ad scheduled to run on the
dates indicated below.

Please confirm placement prior to deadline,
by contacting your
account rep at (509) 577-7740.

Date: 07/21/21 Account #: 110358 Company Name: CITY OF YAKIMA PLANNING Contact: ROSALINDA IBARRA,AP Address: 129 N 2ND STREET YAKIMA, WA 98901-2720 Telephone: (509) 575-6164 Fax:	Run Dates: Yakima Herald-Republic 07/23/21 YakimaHerald.com 07/23/21
Ad ID: 982270 Start: 07/23/21 Stop: 07/23/21 Total Cost: \$146.00 # of Inserts: 2 Lines: 77.0 Ad Class: 6021 Ad Class Name: Public Legal Notices Account Rep: Simon Sizer Phone #: (509) 577-7740 Email: ssizer@YAKIMAHERALD.COM	

Ad Proof

CITY OF YAKIMA NOTICE OF APPEAL OF ADMINISTRATIVE OFFICIAL'S DECISION & PUBLIC HEARING

DATE: 7/23/2021; **City File #:** APP#001-21; This notice is being provided to parties of record, the applicant, and the appellant that a timely appeal was filed by West Valley School District on 07/14/2021 for the Administrative Official's Decision on MOD#021-21 regarding the requested site grading modifications. The decision approved the placement of a five-foot-wide walking path around the perimeter of the playfield, revised backstop and goal-post locations, reduction in asphalt for the playground, and installation of sitescreening, subject to conditions, but denied the regrading of the site, in the R-1 zoning district. The subject property is located at 7 N. 88th Ave., Yakima, WA 98908. In accordance with YMC § 15.16.040(D), "The [Planning] division shall: Set a reasonable time and place for the hearing of the appeal; and, Provide a notice of appeal and public hearing to the official whose decision is being appealed and parties entitled to notice of the decision, including posting of property and published notice at least ten days prior to the hearing." **Appeal Hearing:** The Hearing Examiner will hold a public hearing on **August 12, 2021 at 9:00 a.m.** in the City Council Chambers at 129 N. 2nd Street, Yakima, WA, 98901. In accordance with YMC 15.16.040(G), "Testimony given during the appeal shall be limited to those points cited in the appeal application." At the conclusion of the hearing, the Hearing Examiner will issue his written decision within ten working days unless a longer period is mutually agreed to by the applicant and the examiner." **Final Decision:** In accordance with YMC § 16.08.108 (G), "Except as otherwise provided, all appeal decisions by the hearing examiner shall be final and conclusive on all parties unless appealed to the legislative body pursuant to this chapter." For further information or assistance you may contact Eric Crowell, Associate Planner, at (509) 576-6736, or email to: eric.crowell@yakimawa.gov.

(982270) July 23, 2021

DOC.
INDEX

E-2a



DEPARTMENT OF COMMUNITY DEVELOPMENT

Joan Davenport, AICP, Director

Planning Division

Joseph Calhoun, Manager

129 North Second Street, 2nd Floor, Yakima, WA 98901

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

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

City File #: APP#001-21

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

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

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

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

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

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

Eric M. Crowell

Eric Crowell
Associate Planner

DOC.
INDEX
E-2

Enclosures: Appeal Application



CITY OF YAKIMA
LAND USE ACTION INSTALLATION
CERTIFICATE

RECEIVED

AUG 02 2021

CITY OF YAKIMA
PLANNING DIV.

File Number:	APP#001-21
Applicant/Project Name:	WVSD Apple Valley Elem.
Site Address:	7 North 88th Ave
Date of Posting:	7/29/21
Land Use Sign ID#(s):	

Location of Installation (Check One):

☒ Land Use Action Sign is installed per standards described in YMC §15.11.080(C).

☐ Land Use Action Sign is installed in an alternate location on the site.

Note: this alternate location (if not pre-approved by the Planning Manager) may not be acceptable by the Planning Division and is subject to relocation (at the owner's expense) to a more visible site on the property.

The alternative location is:

The required notice of application will be sent to the applicant and property owners within a 300-foot radius after the Planning Division has received this Land Use Action Installation Certification. Failure to post a Land Use Action sign and return this form signed in a timely manner may cause a delay in the application review process.

I hereby testify that the installed sign fully complies with the Land Use Action sign installation standards (see pg. 2), that the sign will be maintained until a decision has been rendered, and that the sign will be returned within 30 days from the date the final decision is issued.


Applicant's Signature

8/2/21
Date

Ron Huyler
Applicant's Name (Please Print)

509-496-1712
Applicant's Phone Number

Please fill out and sign the above certification after posting and deliver to the City of Yakima Planning Division via email to ask.planning@yakimawa.gov or in person/by mail to: City of Yakima, Planning Division, 129 North 2nd Street, Yakima, WA 98901.