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**OLYMPIA
HEARING EXAMINER
DECISION**

April 22, 2013

Greetings,

Subject: INGERSOLL STADIUM USE MODIFICATION
Case# 11-00159

The enclosed decision of the Olympia Hearings Examiner hereby issued on the above date may be of interest to you. This is a final decision of the City of Olympia

In general, any appeal of a final land use decision must be filed in court within twenty-one days. See Revised Code of Washington, Chapter 36.70, for more information relating to timeliness of any appeal and filing, service and other legal requirements applicable to such appeal. In particular, see RCW 36.70C.040.

If you have any questions, please contact me at the City of Olympia, Community Planning and Development Department, at 601 4th Avenue E or at PO Box 1967, Olympia, WA 98507-1967, by phone at 360-753-8591, or by e-mail at sfriddle@ci.olympia.wa.us

Sincerely,

STEVE FRIDDLE
Community Services Manager
Community Planning & Development

**FINDING, CONCLUSION AND DECISION
OF THE HEARING EXAMINER FOR
THE CITY OF OLYMPIA**

CASE: Ingersoll Stadium, Olympia High School, Policies and Procedures
11-0159

APPLICANT: Olympia School District
1113 Legion Way SE
Olympia, WA 98501

REPRESENTATIVES:	Jeff Carpenter	Denise Stiffarm
	Coordinator Health, Fitness & Athletics	Attorney at Law
	1113 Legion Way SE	925 4th Ave, Ste 2900
	Olympia, WA 98501	Seattle, A 98104

SUMMARY OF REQUEST:

Referral to Hearing Examiner from Site Plan Review Committee to review revisions proposed by the Olympia School District to adopted procedures for the operation of Ingersoll Stadium (District Procedure No. 4260P(C)).

LOCATION OF PROPOSAL:

Olympia High School, 1302 North Street SE, being a part of Walker Donations Claim No. 38, T18N, R2W, W.M. (Parcel No. 09890050000)

SUMMARY OF DECISION: The procedures are approved, as revised.

HEARING AND RECORD:

After reviewing the Staff Report, the Hearing Examiner Pro Tempore held a public hearing on March 11, 2013, at Olympia City Hall.

Steve Friddle, Community Services Manager, presented the Staff Report for the City.
Darren Nienaber, Assistant City Attorney, represented the City.

Robert B. Shirley, Attorney at Law, represented property owners Joseph B. Ford, Bonnell C. Jacobs and Jim Lazar.

Jeff Carpenter, Athletics Coordinator, spoke for the School District. Denise Stiffarm, Attorney at Law, represented the District and presented a substitute proposal on the District's behalf.

Public testimony was heard from Joseph Ford, Charles Dinwiddie. James Jablonski, Jan Witt, Zandra Brown, Tim Ahern, Chris Woods, and Jeanne Miller.

41 Exhibits were admitted at the hearing. Eight post-hearing submissions were admitted.

PROCEDURE

1. The instant proceeding is the outgrowth of a Hearing Examiner decision (File No. 03-2397) issued on May 28, 2004. At that time, following an appeal hearing, the Examiner upheld a Site Plan Review Committee Land Use Approval regarding the remodel of Ingersoll Stadium on the grounds of Olympia High School. The Examiner added the following additional conditions of approval:

1. The facilities at issue may be used for School District activities and for only the following non-District activities: Thurston County Youth Football, YMCA and City Parks track meets, occasional sports clinics, and youth soccer associations.
2. As it relates to the Stadium, the District shall comply with its "Procedure No. 4260P(C)" as it is set out in Ex. M-1 Att. B, unless permission is obtained from the Site Plan Review Committee to modify it.
3. The Traffic and Parking Management Plan required by the Land Use Approval shall comply with the requirements of Ex. 1, p.2, Item 6.
4. The District shall not rent or make available the Stadium for non-District uses for which attendance exceeds total on-site parking available in the Stadium and High School parking lots. If the High School auditorium is in use at the same time as non-District use of the Stadium, the total attendance of the Stadium and Auditorium uses cannot exceed total on-site parking available in the Stadium and High School parking lots.
5. The noise exemption of WAC 173-60-050(4)(h) includes those activities that any member of the public may attend, whether or not admission is charged. It does not include other District or non-District activities.
6. Unless exempted by law, all activities at the Stadium and its track and field shall comply with the noise regulations found in WAC 173-60 and other applicable law.

2. Procedure No. 4260P(C) (hereinafter "the Procedures"), which the Hearing Examiner incorporated into the approval of the Stadium remodel, is a set of operating rules governing use of the Stadium adopted by the School District. The Procedures are intended to reduce the effect of the Stadium's use on the surrounding neighborhood through such measures as restricting hours of use, regulating lighting, limiting the use of noise makers.

3. Because of Condition 2 in the Hearing Examiner's 2004 decision, any changes the School District wishes to make in the rules for operating the Stadium, have become a matter of land use approval by the City.

4. The matter at hand is a School District application to revise the Procedures. The Site Plan Review Committee (SPRC) referred this application to the Hearing Examiner to be decided after a public hearing, governed by the new Hearing Examiner Rules adopted in the fall of 2012.

5. In the fall of 2004, shortly after the initial Hearing Examiner decision, the District proposed and the SPRC approved some alterations to the Procedures, known as the "Wolpert Version." These were regarded by the SPRC as non-substantive and no public notice was given prior to their adoption. Because of the lack of notice, this SPRC action was not discovered by appellants in the original case (File No. 03-2397) until November of 2012. Upon this discovery, Ford, Jacobs and Lazar appealed the "Wolpert Version" and then moved both to reopen the original case and to consolidate their "Wolpert" appeal with the instant proceeding. They argued that their appeal was timely under the doctrine of equitable tolling.

6. In the instant proceeding, the applicant School District has sought review of their proposed modifications against the original version of the Procedures adopted as Condition 2 in the Hearing Examiner's May 2004 decision. Controversial additions from the "Wolpert Version." have been eliminated.

7. At the outset of the hearing, the Examiner declined to re-open the original case and denied the motion to consolidate, on the basis that changes in the Procedures made in the "Wolpert Version" would be mooted by the decision in the instant case. Whatever was in effect before will be replaced by the version of the Procedures adopted as a result of the instant proceedings.

8. The Examiner also ruled that the instant case should be heard under Hearing Examiner rules for permits and approvals (Chapter 3) and not under the rules for appeals (Chapter 4). However, cross-examination by counsel for Ford, Jacobs and Lazar was permitted.

9. In its initial oral presentation, the applicant School District revealed that, just prior to the hearing, it had submitted a substitute proposal making some significant changes in what it wants the Procedures to say. During the course of the hearing, the District agreed to some changes in the substitute proposal. At the close of the hearing counsel for Ford, Jacobs and Lazar asked for additional time to comment on the final version of the proposal.

10. The Examiner granted this request and asked that the City circulate a copy of the revised proposal to parties of record as soon as possible after the hearing. The Examiner held the record open for added comments until March 27, 2013. The School District was given until April 3, 2013 to respond to the comments. At that point the record closed.

FINDINGS OF FACT

1. Factual matters contained in the foregoing section on "Procedure" are hereby adopted as findings.

2. The Olympia School District seeks to revise its Procedure No 4260P(C) ("the Procedures"), altering the terms of that document as it was when incorporated as Condition 2 to

the Hearing Examiner's decision of May 28, 2004. The Procedures relate to the use of Ingersoll Stadium at Olympia High School.

3. There was no appeal of the May 2004 decision. Instead, the appellants obtained a promise that special notice would be given to the neighborhood of any future proposed changes to the Procedures. This commitment was not honored in the case of the "Wolpert Version". Nevertheless at the instant hearing and in its post-hearing submission, the District argued that the May 2004 hearing decision is final and that matters decided then cannot now be considered again.

4. Included in the matters then decided was the issue of whether a Conditional Use Permit is required in regard to applications affecting the Stadium and its use. This was decided in the negative, eliminating the usual inquiry into compatibility of the use with its residential setting.

5. Also decided in the May 2004 decision was the issue of coverage of the noise standards of Chapter 173-60 WAC. Under the prior ruling, public events at the Stadium are exempt from the noise standards. Thus, the standards do not apply to most of the events held there.

6. Olympia High School and Ingersoll Stadium are located at 1302 North Street SE on property zoned Residential 4-8. In all directions from the site are single family residential homes located within residential zoning.

7. The persons now expressing concerns about the proposed revisions are residents of the neighborhood in the vicinity of Stadium, most of whom participated in the prior proceedings. They expressed deep distrust of the District's motives and methods, fueled in large part by the lack of public notice of the adoption of the "Wolpert Version" in late 2004.

8. The underlying problem for the residential neighborhood is with the noise, bright lights and mess attending the conduct of Stadium events. The major worry is that the District wants to expand non-school activities at the site, turning it into a profit center, with resulting increased disruption of normal residential life in the neighborhood.

9. The neighbors focused particularly on the non-district users allowed at the Stadium. The allowable list of such users was the subject of Condition 1 of the Hearing Examiner's May 2004 decision. The condition limited non-district activities to : "Thurston County Youth Football, YMCA and City Parks track meets, occasional sports clinics, and youth soccer associations." The "Wolpert Version" incorporated this listing into the Procedures. The concerned citizens urged that Condition 1 is a separate restriction which stands on its own and should not become a part of the Procedures. The apparent perception is that the list would be easier to expand if part of the Procedures.

10. The District attempted to head off this concern by leaving the listing of non-District users out of the instant proposal for the Procedures. Condition 1 is not affected by the version of the Procedures before the Examiner in this case. Nonetheless, the citizens remain suspicious.

11. The School District, as lead agency, determined that the instant proposal is a procedural action exempt from the threshold determination and EIS requirements of the State Environmental Policy Act. WAC 107-11-800(19).

12. The changes actually proposed by the District are, in fact, modest -- many concerning matters of detail or wording. The main modifications proposed, are as follows:

- a. Eliminate all language regarding permissible approved non-District user groups.
- b. Include the language of Condition 4 of the Hearing Examiner's decision of May 28, 2004, forbidding non-District use of the Stadium when available on-site parking will be exceeded.
- c. Restore language in the "Lighting and Sound Systems" section to reflect Examiner's Finding 23, in effect requiring all field lights to be turned off at 10 p.m.
- d. Remove language in the "Hours of Operation" section relating to a special exception for high school varsity football and soccer games.
- e. Restore language in the "Supervision" section calling for the posting of approved Traffic and Parking management plans on the District's website.

13. Initially the District proposed the formation of a citizen's advisory committee to discuss issues related to operations of the Stadium. During the course of the hearing, this proposal was withdrawn, after citizen testimony questioned the likely objectivity of the committee.

14. There was a contention that because the District charges a user fee to non-District users, it is running in a commercial operation, an activity not allowed in the residential district. However, the evidence is clear that the District is not engaged and does not intend to engage in a commercial operation. Money-making is not its object. The District does charge a user fee in order to recoup some of its costs for non-District Stadium use. There is no support in the Code for the proposition that this action somehow converts the use into a commercial one.

15. Since the May 2004 decision, the District has made changes in the lighting and sound systems at the Stadium. The proposed changes to the Procedures are intended to accommodate those changes, and to tighten the restrictions in place. For example, the proposed Procedures add a limitation that the sound system may not be used by non-District users except at youth track meets conducted by the City Parks and Recreation Department.

16. Public commenters on the proposal argued that a number of the provisions are ambiguous. The Examiner disagrees, except as follows:

- (a) The proposal states : "At no time may a secondary sound system be used to increase decibel levels above that allowed for the stadium sound system." Given

the ruling that noise standards do not apply at public events, the objection was made that this does not impose a meaningful limit. The District clarified that the stadium sound system itself has a maximum decibel level and that the purpose of the sentence is to prohibit use of a secondary system that would increase the system's decibel level. The Examiner finds the proposed language ambiguous and directs that it be amended to read: "At no time may a secondary sound system be used to increase the decibel level above the maximum decibel level of the stadium sound system."

(b) Use of the term "field lights" is unclear as that term is used in the proposal. This problem can readily be resolved by amendatory language showing that "field lights" are the Zone 1 lights.

(c) The proposal limits use of "Zone 2" lights to "high school Varsity football and soccer games" A suggestion was made that this be changed to refer to varsity football and varsity soccer games. The District responded that it intends for all levels of soccer games, not just varsity soccer, to have access to the full lighting system. As written, the language is unclear. The reference should be amended to read "high school Varsity football and all soccer games."

17. The proposed changes to the Procedures include a system for the District's handling of citizen complaints regarding the operation or management of the Stadium. While no such formal system was a part of the Procedures in the past, the citizens expressed skepticism as to its likely the objectivity and effectiveness. In any event, adoption of a complaint system by the District in no way with limits the rights of citizens to make complaints to the City.

18. Ford, Jacobs and Lazar requested that Procedure 4260P(C) include a statement that the document is "approved by the City of Olympia pursuant to land use application File No. 11-0159 and File No. 03-2397." The District did not oppose including such a statement. The Examiner concurs with the suggestion.

19. Except as set forth above, the Examiner declines to make changes in the proposal as submitted.

20. In addition to the critical comments of neighbors, supportive testimony was given by the principal of Capital High School and the athletic director for Olympia High School, emphasizing the value of athletics and related activities in the educational process.

21. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over this proceeding pursuant to the reference of the SPRC. OMC 18.60.080(C).

2. The requirements of SEPA have been met.

3. Public notification of the hearing was given as required by OMC 18.78.020.
4. The matter was properly treated as an application for approval under Chapter 3 of the Hearing Examiner's Rules.
5. The matters previously decided in the Hearing Examiner's decision of May 28, 2004, have been finally decided and may not be re-litigated in this proceeding. *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d (2000).
6. Accordingly, whether a Conditional Use Permit is needed or whether the activities at public events at the Stadium are subject to State noise limits cannot be considered here.
7. The use involved here is not a Commercial Use as that term is used in Table 4.01, OMC 18.04.040..
8. The proposal is a land use approval governed by Chapter 18.60 OMC. The record does not show that the proposal, as conditioned, is inconsistent with any standards or provisions of the City of Olympia as expressed in the various adopted plans and ordinances, including Title 18.
9. The modifications of District Procedure No 4260P(C), as ultimately proposed in Exhibit 42 herein, are changes which do not alter the operation of the Ingersoll Stadium in any major way. The list of non-District users is not expanded. The conditions of the Hearing Examiner decision of May 28, 2004, are left intact.
10. The Examiner notes that there appears to be an extreme lack of trust of the District by the neighbors of Olympia High. The situation is the kind of community rift that might be effectively addressed through the use of mediation procedures. In any event, there is unquestionably a need for better communication. At a minimum, the City owes a duty to provide notice to residents within a broadly defined vicinity of the site of any changes of any kind in the Procedures, whether deemed substantive or not by the school and governmental actors involved.
11. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

1. Modified Procedure No. 4260P(C) as set forth in Exhibit 42 herein shall be altered as follows:
 - a. Under "Light and Sound Systems, Definition of Terms: Lighting System:" change the first line to read: " 'Zone 1' refers to the field lights and includes the center bank of lights on each light stand."
 - b. Under "Light and Sound Systems. " paragraph 2. change the second sentence to read: "The use of the 'Zone 2' lighting system (side lighting) is limited to high

school Varsity football and all soccer games."

c. Under "Light and Sound Systems." paragraph 7, change the last sentence to read: At no time may a secondary sound system be used to increase the decibel level above the maximum decibel level of the stadium sound system."

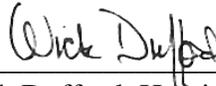
2. Modified Procedure P4260P(C) shall include the following statement: "This document is approved by the City of Olympia pursuant to land use application File No 11-0159 and File No. 03-2397."

3. Notice of any future applications by the School District for changes in the subject Procedures shall be provided by mail to all residents within a 1,000 feet of the Stadium.

DECISION

The proposed modifications to Olympia School District Procedure No. 4260P(C), as set forth in Exhibit 42 herein and as further altered by the above conditions, are approved. This is a final decision of the City.

DATED, this 22nd day of April, 2013.



Wick Dufford, Hearing Examiner Pro Tempore

RECONSIDERATION/APPEAL

This is a final decision of the City. Any party may file a Motion for Reconsideration within 10 days of service of this decision in accordance with OMC 18,75.060. Appeals shall be made to Superior Court pursuant to the provisions of Chapter 36.70C RCW. The filing of a Motion for Reconsideration is not a prerequisite for seeking judicial review. If a Motion for Reconsideration is filed, the time for filing an appeal shall not commence until disposition of the Motion.

Ingersoll Stadium Procedures Hearing -- Exhibits

- Exhibits 1 through 33 are attachments to the Staff Report, identified on pages 7 through 9.
- Exhibit 34 -- Partial Response by Ford, Jacobs and Lazar to City Staff Report
- Exhibit 35 -- Inquiry of Robert Shirley about hearing procedures.
- Exhibit 36 -- Substitute Proposal for Procedure 4260P(C), dated March 8, 2013
- Exhibit 37 -- Statement of Ray Dinwiddie, March 11, 2013, with noise readings attached.
- Exhibit 38 -- Testimony of Joseph B. Ford, March 11, 2013
- Exhibit 39 -- Comments of Jeanne Miller, March 10, 2013, with prior comments attached.
- Exhibit 40 -- Testimony of Zandra Brown, March 11, 2013
- Exhibit 41 -- Statement of James Jablonski, dated March 9, 2013
- Exhibit 42 -- Revised Proposal for Procedure 4260P(C) received by City March 13, 2013 and Email showing transmission to Parties of Record on that date.
- Exhibit 43 -- Response of James Jablonski, dated March 23, 2013. with four attachments
- Exhibit 44 -- Response of Jeanne Miller. dated March 24, 2013
- Exhibit 45 -- Response of Zandra Brown, dated March 25, 2013, with photographs
- Exhibit 46 -- Response of Tom Culhane, dated March 24, 2013
- Exhibit 47 -- Response of Ford, Jacobs and Lazar, dated March 25, 2013
- Exhibit 48 -- Response of C.R. Dinwiddie, date March 27, 2013\
- Exhibit 49 -- Response to comments by Olympia School District, April 3, 2013.