



November 30, 2020

Greetings:

**Subject: Ingersoll Use Modification
File Number 20-3702**

The enclosed decision of the Olympia Hearing 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 (21) days. See Revised Code of Washington, Chapter 36.70C, 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.

Please contact the City of Olympia, Community Planning and Development Department, at 601 4th Avenue East or at PO Box 1967, Olympia, WA 98507-1967, by phone at 360-753-8314, or by email cpdinfo@ci.olympia.wa.us if you have questions.

Sincerely,

Kenneth Haner
Program Assistant
Community Planning and Development

Enclosure:

1 BEFORE THE CITY OF OLYMPIA HEARINGS EXAMINER

2 IN RE:) HEARING NO. 20-3702
3 INGERSOLL USE MODIFICATION) FINDINGS OF FACT,
4) CONCLUSIONS OF LAW
5) AND DECISION

6 **APPLICANT:** Olympia School District

7 **REPRESENTATIVES:**

8 Jennifer Priddy, Assistant Superintendent Denise Stiffarm, Attorney
9

10 **SUMMARY OF REQUEST:**

11 The Applicant requests amendment of the conditions of approval imposed in 2004 on non-
12 district use of Ingersoll Stadium. No other changes to the stadium use are proposed.

13 **LOCATION OF PROPOSAL:**

14 1302 North Street SE

15 **SUMMARY OF DECISION:**

16 The Applicant's request for amendment is **approved** subject to additional conditions.

17 **BACKGROUND**

18 Over the past two decades the City of Olympia has experienced few more contentious,
19 ongoing land use issues than the allowed uses for Ingersoll Stadium and surrounding recreational
20 areas adjacent to Olympia High School. This issue returns to the Hearing Examiner for the
21 fourth time since 2004 on an application by the Olympia School District to amend the conditions
22 imposed on non-district use of the stadium.

23 In 2004, the School District sought to remodel Ingersoll Stadium, including installation of
24 a new synthetic turf field. The City's Site Plan Review Committee (SPRC) issued conditional
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1 land use approval for the remodel but several neighbors appealed the SPRC Decision to the
2 Hearing Examiner. On appeal, the then Hearing Examiner, Mr. Bjorgen, upheld the project
3 approval but added several new conditions. One of these conditions was that the District must
4 follow the restrictions on use and operation of the stadium "as set forth in District Procedure No.
5 4260P(c) unless permission is obtained from the Site Plan Review Committee to modify them".
6 These procedures are intended to "govern the use of Ingersoll Stadium . . . and mitigate the
7 effect of the facilities on neighboring properties through measures such as limits on the hours of
8 use, requiring the western field lights to be turned off immediately after evening events, and
9 prohibiting airhorns, cowbells, sirens, and similar noisemakers" (the "2004 Decision").

10 The other important condition in the 2004 Decision, and the one that is the subject of the
11 Applicant's current request for amendment, is the restriction on non-district use of the stadium to
12 "Thurston County Youth Football, YMCA and City Parks Track Meets, occasional spot clinics,
13 and Youth Soccer Associations."

14 In about 2012, a question was raised as to whether modifications to District Procedure
15 4260P(c) properly included the neighborhood's involvement. These questions led to a hearing in
16 2013 before an Interim Hearing Examiner, Mr. Dufford, on proposed revisions to the method by
17 which District Procedure 4260P(c) was modified. Mr. Dufford approved modifications to
18 District Procedure 4260P(c) subject to additional conditions. (The "2013 Decision"). As part of
19 this hearing the School District initially asked the Hearing Examiner to consider eliminating the
20 restriction on non-district use of the stadium as a separate condition and simply have it be part of
21 District Procedure 4260P(c). During the course of the hearing the District withdrew this
22 request, leaving the restriction on non-district use as an ongoing, separate condition. As a result,
23 the 2013 Decision does not address this condition, although some individuals have construed it
24 as prohibiting any change to this condition.

1 In 2018, the District applied for a Conditional Use Permit to construct various
2 improvements to Olympia High School. Included among these improvements was the relocation
3 of the existing practice field to an area between Ingersoll Stadium and the High School, and
4 adding synthetic turf and a lighting system. The Conditional Use Application came before the
5 current Hearing Examiner in 2019. Several nearby residents asked the Hearing Examiner to
6 impose the same limitations on non-district use of the practice field as were earlier imposed on
7 Ingersoll Stadium, that is, that its use be limited to "Thurston County Youth Football, YMCA
8 and City Parks Track Meets, occasional spot clinics, and Youth Soccer Associations." The
9 Hearing Examiner declined to impose these restrictions on use of the practice field, noting that
10 their application to the practice field had not been justified and, further, that the restrictions
11 appeared to be outdated, but also noting that any restrictions on the use of Ingersoll Stadium
12 were not before the Hearing Examiner. (The "2019 Decision").

13 Now, sixteen years after the 2004 Decision, the School District asks to remove the
14 restrictions imposed on the non-district uses of the stadium. The District agrees that all of the
15 other restrictions on use contained in District Procedure 4260P(c) would continue to apply. City
16 Staff concurs in the District's request.

17 The District's application is brought pursuant to OMC 18.60.180 which allows a land use
18 decision to be amended at the Applicant's request "by the same procedures provided under this
19 chapter for original application approval". City Staff notes that since the 2004 conditions were
20 imposed by the Hearing Examiner, not SPRC, any amendment to those conditions must also be
21 by the Hearing Examiner.

22 In advance of the hearing before the Hearing Examiner the City scheduled a
23 neighborhood meeting on October 14, 2020. Although this meeting was not required by City
24 regulations, Staff felt that it would assist in providing better communication of the District's
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1 desired changes and allow neighborhood response. Notice of the requested amendment triggered
2 significant public response, both for and against the amendment. Initial public comments are
3 contained in Attachment 12 to the Staff Report while additional public comment continued to be
4 received thereafter. Those opposing the amendment fear that expanded use of the stadium will
5 pose an even greater burden on their nearby residential properties; will increase noise, light
6 pollution, parking conflicts and traffic impacts; that the District is not doing enough to regulate
7 current restrictions on noise, etc. and that expanded uses will only exacerbate this problem; that
8 the School District may take advantage of this change to turn the stadium into a profitmaking
9 facility; and that without clear conditions the facility could become open to use for political
10 rallies, religious gatherings, swap meets and other commercial activities, and emergency and
11 homeless facilities. Supporters of the amendment argue that use of the facility since 2004 by
12 non-district users has not been problematic; that recreational uses have changed significantly
13 since 2004; that eliminating the restriction would be fair and equitable; and that increased use
14 would provide a greater sense of community to the neighborhood.

PUBLIC HEARING

16 The matter was scheduled for public hearing before the Hearing Examiner on Monday,
17 November 9, 2020, at 6:30 p.m. Due to the ongoing Covid-19 pandemic and limits on public
18 gatherings, the public hearing was conducted remotely using the Zoom platform together with
19 supplemental telephonic access for those unable to utilize the Zoom platform. The City appeared
20 through Nicole Floyd, Principal Planner. The District appeared through Jennifer Priddy,
21 Assistant Superintendent for the School District, and was represented by Denise Stiffarm. The
22 proceedings were recorded and all testimony was taken under oath.

23 In advance of the public hearing Ms. Floyd prepared the City Staff Report (Attachment 1)
24 along with all other materials gathered by Staff in advance of the hearing including the District's
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1 "Application Overview" and Traffic Analysis (Attachment 2) as well as all public comment
2 received in advance. Public comments received shortly prior to the hearing were acknowledged
3 as additional exhibits. All of these documents are identified in the attached List of Exhibits.

4 Earlier in the day of the public hearing a project opponent, Jim Lazar, submitted an
5 Affidavit of Prejudice via email against the Hearing Examiner and asked the Hearing Examiner
6 to recuse himself as a result of the 2019 Decision and the Hearing Examiner's comments
7 contained in that Decision. The Hearing Examiner respectfully declined this request.

8 The public hearing began with brief testimony from Mr. Floyd who summarized the
9 information contained in her written Staff Report and reiterated that the SPRC finds that the
10 condition imposed in 2004 is no longer necessary to ensure consistency with the Olympia
11 Municipal Code, and therefore recommends approval of an amendment to the 2004 Decision that
12 eliminates this restriction, but subject to eleven additional conditions as set forth on pages 6 and
13 7 of the Staff Report.

14 Following Ms. Floyd's testimony the School District's legal counsel, Denise Stiffarm,
15 provided a brief opening statement. Ms. Stiffarm reminded the Hearing Examiner that the
16 District's position is largely contained in the Application Overview (Attachment 2). The District
17 believes that the condition has become outdated; is preventing greater diversity in use of the
18 facilities; that more diverse use would not have a negative impact upon the surrounding
19 neighborhood; and that it would be consistent with the planning undertaken between the City and
20 the School District for increased public use of School facilities. Ms. Stiffarm reiterated that the
21 amendment would only be to the allowed non-district users of the facility, and would not lessen
22 any of the restrictions on use (hours, noise, lighting, etc.) imposed by District Procedure
23 4260P(c). Ms. Stiffarm also reminded the Hearing Examiner that the City's proposed conditions
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1 of approval would prevent concurrent non-district use of Ingersoll Stadium and the Practice Field
2 (Condition 11).

3 Following Ms. Stiffarm's opening statement, Jennifer Priddy testified on behalf of the
4 District. Ms. Priddy sought to allay the fears of some opponents that the proposed change was
5 intended as a moneymaker for the District, and assured the public that the amendment was not
6 for the purpose of generating revenue but rather allowing for fair and diverse use of the School's
7 facilities. She recognized that, in doing so, it may even displace some traditional users to allow
8 equitable use by others. Ms. Priddy also noted that the types of desired use of the facility have
9 changed significantly since 2004. At that time, lacrosse was not an organized sport in the
10 community but has since become an important recreational activity, yet is not allowed in the
11 stadium under current restrictions. Similarly, interest in 7 x 7 (flag) football has become popular
12 among young adults yet, again, is prohibited. Similar prohibitions currently apply to rugby, drill,
13 cheer, and other young adult/adult sport and recreational activities. The restrictions are
14 inconsistent with the District's current policies relating to diversity and equity as well as with the
15 District's planning with the City to allow for public use of School facilities. Ms. Priddy does not
16 expect the requested change to have a significant impact on the *volume* of non-district use as
17 there is relatively little additional time available for such uses. Rather, the change would impact
18 the *make-up* of non-district uses, providing for greater diversity/inclusivity, possibly resulting in
19 less available time for traditional uses.

20 At the conclusion of Ms. Priddy's testimony the Hearing Examiner reminded her that the
21 reason many neighbors oppose the amendment is that the City's application would appear to
22 allow wide-open use of the stadium by all types of groups and for all types of uses. The Hearing
23 Examiner noted that Ms. Priddy had earlier engaged in an email colloquy with a nearby resident,
24 Bob Jacobs (included in Attachment 15) , in which Mr. Jacobs had sought clarification on the
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1 District's intended uses, and Ms. Priddy had made various assurances as to what would be an
2 allowed use and, more importantly, what would not be an allowed use. Ms. Priddy assured Mr.
3 Jacobs that allowed uses would be limited to sporting and recreational uses "consistent with
4 appropriate use on a turf field". Political, commercial and other non-sporting/recreational uses
5 would remain prohibited. Ms. Priddy also assured Mr. Jacobs that priority would be given to
6 youth activities recognizing, however, that some sporting and recreational activities have a blend
7 of youth/young adult/adult participation and that activities with blended participation should
8 enjoy some priority as well. Ms. Priddy confirmed that her statements represent the District's
9 position.

10 Following the testimony of Ms. Priddy the hearing was opened for public comment. The
11 following is a summary of that comment. This summary does not include mention of all who
12 testified, nor every issue testified to, but rather is intended to encapsulate the primary arguments
13 made for and against the application. Some witnesses are not mentioned as their testimony is
14 similar to that of others.

15 James Jablonski. Mr. Jablonski has resided near the stadium for the past twenty-five
16 years. He is opposed to the application and believes it to be inconsistent with the declared
17 purposes for residential districts. OMC 18.04.020(A)(3). He is concerned about additional light,
18 sound and parking impacts especially as the District has not responded well to such impacts in
19 the past. He does not believe the use to be consistent with the surrounding neighborhood uses.
20 He believes that the 2004 Decision is fixed and should not be relitigated. He also believes that
21 the expanded use is inconsistent with the provisions for parks in residential districts. OMC
22 18.04.060.

23 Sean Johnson. Mr. Johnson and his family have been heavily involved in Olympia
24 lacrosse. Lacrosse teams struggle regionally to reserve fields for use, especially on full-sized turf
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1 fields. Elimination of the current restriction would give local girls and boys lacrosse teams equal
2 opportunity for use as other youth activities. Mr. Johnson notes that lacrosse was not a
3 recognized sport in Olympia in 2004 and has only become popular during the past seven years.
4 He adds that his son, an Olympia High School student, is currently prevented from playing his
5 sport on his own high school field as a result of the 2004 restriction.

6 Karen Messmer. Ms. Messmer testified orally and also submitted her testimony in
7 written form (Attachment 24). Ms. Messmer is opposed to the application, believing that it is not
8 in compliance with development regulations (OMC 18.04.020; OMC 18.04.060) and is also
9 inconsistent with the City's Comprehensive Plan including its goals of providing spaces that are
10 safe and pedestrian friendly as well as places for quiet residential uses and places where
11 economic activity is emphasized. Ms. Messmer is concerned that the District will have too much
12 control over allowed uses, limiting the neighborhood's voice, and that the District has historically
13 done a poor job of responding to neighborhood concerns and complaints. She is concerned that
14 lifting the restriction will intensify the stadium's use, creating even greater inconsistently with
15 the Comprehensive Plan. She is also concerned that the District has not adequately addressed
16 noise and traffic concerns, especially the safety of pedestrians. Ms. Messmer asks that the
17 application be denied or, at a minimum, that any increased use be conditioned to avoid any
18 greater impact on the neighborhood.

19 Zandra Brown. Ms. Brown is one of the closest residential neighbors to the stadium and
20 opposes the application. She believes that the 2004 Decision properly protects the surrounding
21 neighborhood and should not be tampered with. She adds that the 2013 Decision expresses the
22 formal position that these conditions are fixed and not to be relitigated, referring to Mr. Dufford's
23 citation to *Wenatchee Sportsman Association v. Chelan County*, 141 Wn.2d (2000). Similar to
24 Mr. Jablonski and Ms. Messmer, she believes that the changes are not in compliance with the
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1 purposes of residential districts. OMC 18.04.020. She adds that the new practice field does not
2 have these restrictions and thus provides a sufficient enough opportunity for uses currently
3 prohibited from using Ingersoll Stadium.

4 Jim Lazar. Mr. Lazar began his testimony by raising two procedural issues: (1) He
5 repeated his Affidavit of Prejudice and asked the Hearing Examiner to recuse himself (denied)
6 and (2) sought the right to cross-examine all other witnesses on the basis that he was a "party" to
7 the proceeding. In a supplemental written statement Mr. Lazar explained that his desire for
8 cross-examination was to confirm that several witnesses in support of the application do not live
9 near the stadium. Following these procedural issues Mr. Lazar testified in opposition to the
10 application. He believes that *res judicata* applies and that the issue cannot be relitigated. He
11 also believes that the District has, on several occasion, violated its own policies and procedures
12 relating to the use of its grounds including electronic signage. Mr. Lazar believes the proposed
13 use to be a "commercial" activity and thus prohibited in this Residential Zoning District. He
14 acknowledges that sports and recreational activities evolve over time but that does not justify the
15 elimination of the restriction but, instead, that allowed uses be adjusted to reflect those currently
16 most popular. Should the application be granted, Mr. Lazar asks that conditions be imposed that
17 sanction the District for any repeated violations. He also notes that current procedures do not
18 require the identification of an onsite representative for the activity. He suggests that each
19 allowed activity be required to identify a contact person and their cell number in order to be
20 promptly reached.

21 Mark Boyer. Mr. Boyer resides in the neighborhood in close visual and audible
22 proximity with the stadium. He is frustrated with those who oppose the application as it is a
23 well-intended effort to provide fair, equitable use of these facilities even though that expanded
24 use may restrict his own children's available use of the stadium. Mr. Boyer believes that efforts
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1 should be made to allow for maximum healthy outdoor activity and that our children must be
2 given every opportunity, and encouraged, to remain active outdoors. He adds that Ingersoll is
3 one of a very select number of full size turf fields for both soccer and football and thus offers
4 unique, year round opportunities for play. As a nearby resident, he has not experienced any
5 light-related problems with non-district uses nor any noise or traffic-related impacts. He
6 acknowledges that traffic in the neighborhood is a problem but not because of non-district use of
7 the stadium.

8 Bryce Schneider. Much like Mr. Boyer, Mr. Schneider expresses surprise to opposition
9 to having greater outdoor opportunities for young people. Ingersoll's full size turf field should be
10 available to a diverse set of recreational uses and not simply those recognized in 2004.

11 Sean O'Neill. Mr. O'Neill repeated many of the same comments as Mr. Boyer and Mr.
12 Schneider but added a reminder that the new practice field is not an adequate alternative for
13 lacrosse and other uses currently prohibited from using Ingersoll Stadium. Not only does the
14 practice field not offer the same full sized facility but, more importantly, conditions imposed on
15 its use prohibit it from being used whenever Ingersoll Stadium is being used by either a District
16 or non-district user. In other words, if lacrosse and other similar uses are restricted to the
17 practice field they will always receive inequitable treatment.

18 Jami Downing. Ms. Downing has four sons who have attended local schools including
19 Olympia High School. Like others, her children attending Olympia High are currently prevented
20 from playing lacrosse in their own high school facility. Ms. Downing is a real estate agent and
21 believes that robust use of Ingersoll gives added value to the neighborhood and is a benefit to
22 property values.

23 Janet Witt. Ms. Witt has resided three blocks from the stadium for the past thirty years.
24 She shares the opposition of other neighbors who believe that expanded use is inconsistent with
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1 the neighborhood's residential zoning. She is concerned that the proposed expansion of uses is
2 not well enough described to know what use may be made of the stadium, and how those uses
3 may affect noise and other impacts. At a minimum, Ms. Witt recommends that, if approved, the
4 expanded use be carefully regulated.

5 It should be noted that the testimony of these individuals and others is set forth more fully
6 in their written statements.

7 Following the conclusion of public testimony the City was provided an opportunity to
8 respond. Ms. Floyd stated that, after hearing public testimony, the City remained supportive of
9 the application subject to the previously recommended but would not oppose an additional
10 condition that priority be given to youth-related activities.

11 The School District was then allowed an opportunity to respond. Ms. Stiffarm disagreed
12 with those who claim that the 2013 Decision somehow prevented this condition from later being
13 amended, as this condition was not addressed in the 2013 Decision. Ms. Stiffarm added that the
14 citation to *Wenatchee Sportsman Association v. Chelan County* in the 2013 Decision was not
15 meant to suggest that this could not be later amended, but rather to remind the parties that certain
16 legal conclusions could not be re-litigated. The District is not seeking to re-litigate legal
17 conclusions but rather is asking for an amendment of the *conditions* imposed on the project
18 based upon the legal conclusions reached. The Hearing Examiner has ample authority to amend
19 the conditions imposed on the project. Ms. Stiffarm also reiterated Ms. Priddy's earlier
20 testimony that the proposed amendment will not materially intensify non-district use as the
21 conditions of use will remain the same under District Procedure 4260P(c), and as there is
22 relatively little extra available time for non-district users. The change will occur largely in the
23 diversity of such uses, not in the amount of use or its impact. Ms. Stiffarm adds that the change
24 is consistent with the City's Park's Plan and the District's goal of partnering with the City to

1 provide greater use of recreational facilities. She adds that the District is in agreement that uses
2 be limited to "sports or recreational activities consistent with the use of a turf field."

3 Following Ms. Stiffarm's statements Ms. Priddy responded that the District remains
4 committed to prioritizing activities recognizing, however, that youths and young adults are often
5 involved in blended recreational activities that should enjoy some level of priority as well.

6 As the conclusion of the public hearing the Hearing Examiner expressed concern that the
7 remote hearing process may prevent some members of the public from participating and that
8 every opportunity should be given to the public to be heard. To that end, the Hearing Examiner
9 kept the hearing open through Friday, November 13, 2020, for any additional written public
10 comment. Several additional comments were received and are included in the List of Exhibits.
11 In addition, the Hearing Examiner asked City Staff to review Policy PS.2 in the City
12 Comprehensive Plan ("Promotes Sharing School Facilities for Neighborhood Parks, Recreation,
13 and Open Space") to determine if this Policy had been established after the 2004 Decision. Later
14 in the week Ms. Floyd provided a written response explaining that this policy was in effect at the
15 time of the 2004 Decision.

16 PRELIMINARY LEGAL CONCLUSIONS

17 Before entering Findings of Fact and general Conclusions of Law it is important to
18 address several preliminary legal issues relating to the issues presented in the form of a hearing:

19 **1. Can the condition be amended? If so, what is the standard for amendment?**

20 Many of those who oppose the application argue that, as a matter of law, the condition is not
21 subject to amendment. They argue that it is "res judicata" or, alternatively, that the 2013
22 Decision and/or its reference to *Wenatchee Sportsman* preclude any possibility of amendment. I
23 respectfully disagree. The 2013 Decision does not preclude amendment to this condition.
24 Indeed, the Decision does not even address this condition, as the District had earlier withdrawn
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1 any request for its review and it was therefore not before Mr. Dufford. And the citation to
2 *Wenatchee Sportsman* has been misunderstood by those who claim it stands for the proposition
3 that the condition cannot be modified. *Wenatchee Sportsman* merely recognizes the concept of
4 judicial estoppel and the general prohibition on re-litigating legal issues. As the School District
5 correctly notes, the requested amendment does not involve a legal conclusion but rather a
6 condition of project approval. The City's Development Regulations expressly allow such
7 conditions to be subsequently amended. OMC 18.60.180. The City is well within its authority
8 in allowing this.

9 While OMC 18.60.180 expressly allows the Hearing Examiner to amend earlier
10 conditions of approval, it does not establish any standards for review. By analogy, other legal
11 decisions subject to amendment (parental custody, spousal and child maintenance, etc.) generally
12 require that there be some substantial change in circumstances justifying the amendment, and
13 that it not serve as an open invitation to constantly challenge earlier decisions by those who
14 disagree. To those ends, it is important that the applicant demonstrate that the requested
15 amendment is based upon a significant, material change in circumstances to either the City's
16 Comprehensive Planning and Development Regulations, or subsequent changes in land use or
17 evidence that the condition no longer serves its intended purpose. The District's application for
18 amendment will be reviewed on this basis.

19 **2. What is the proper form of a hearing?**

20 It should be remembered that the 2004 hearing came before the Hearing Examiner as an
21 appeal of project approval granted by the SPRC. As an appeal, the hearing was conducted as a
22 quasi-judicial proceeding, not as a public hearing. When the matter came back before the
23 Hearing Examiner in 2013 (for review of the policies and procedures relating to District
24 Procedure 4260P(c)) Mr. Dufford regarded the hearing as a public hearing, not as a continuation
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1 of the earlier quasi-judicial appeal. I agree with the approach taken by Mr. Dufford in his 2013
2 hearing and am treating this hearing in the same manner, that is, it is to be held as a public
3 hearing rather than as a continuation of the 2004 appeal. This interpretation is consistent with
4 the City's Development Regulations and, more importantly, assures the greatest level of public
5 participation especially where, as here, the original appeal occurred sixteen years ago and its
6 participants may no longer be interested in the project, while other members of the public may
7 have acquired a substantial interest. Treating the review as a public hearing assures the greatest
8 level of notice to the public and opportunity to be heard.

9 **3. Is there a right of cross-examination?**

10 During the course of the public hearing Mr. Lazar asked that he be allowed to cross-
11 examine other members of the public on the basis that he was a "party" to the proceeding and
12 therefore entitled to cross-examination. I respectfully disagree for the reasons just explained,
13 that is, this matter is being treated as a public hearing in which those members of the public
14 giving testimony are not subject to cross-examination. The reasons for this policy are well
15 established. There may be dozens, possibly even hundreds of individuals participating in a
16 public hearing. Allowing any one participant the right to cross-examine all of the other
17 participants would entitle all other participants the same right. This would create an
18 uncontrollable situation and, additionally, would chill public participation.

19 During the 2013 hearing Mr. Lazar and a group of other individuals were collectively
20 represented by an attorney. Their attorney asked for, and received, special permission to cross-
21 examine the School District representatives. This limited right was given only to legal counsel
22 and only for a limited purpose. Those circumstances do not apply in this instance and cross-
23 examining of members of the public would be inappropriate. Furthermore, Mr. Lazar's stated
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1 purpose – to confirm that many witnesses supportive of the application do not live near the
2 stadium – would not inform the decision making as it is already clear that this is the case.

3 **4. Can any interested party demand recusal of the Hearing Examiner?**

4 Mr. Lazar has also filed an Affidavit of Prejudice and claims, as a matter of right, to insist
5 that the Hearing Examiner recuse himself. But it has long been recognized that no such right
6 exists with public hearings such as this one. Any other result would effectively allow interested
7 parties to block every person otherwise qualified to serve as hearing examiner. Participants to
8 public hearings do not have the right to demand recusal.

9 Mr. Lazar counters with the argument that, even if recusal cannot be demanded as a right,
10 it can still be demanded if the hearing examiner demonstrates bias. Mr. Lazar cites to the recent
11 2019 Decision as evidence of such bias. In particular, Mr. Lazar claims that the Hearing
12 Examiner's comments regarding the 2004 Decision were hostile, unnecessary and gratuitous, and
13 were evidence of bias. Again, the Hearing Examiner respectfully disagrees. The only purpose
14 of referring to the 2004 Decision was to provide a heightened level of transparency as to why the
15 restrictions on non-district use would not be extended to the practice field. Questioning whether
16 earlier conditions retain value is neither hostility or bias. The Hearing Examiner has no
17 connection to any party to this proceeding, nor any hostility to any participant, nor any personal
18 interest in the outcome.

19 **ANALYSIS**

20 As noted in the foregoing Preliminary Conclusions, in order for the District's Application
21 for Amendment to be approved it must demonstrate that there has been a substantial change in
22 circumstances resulting in it no longer being beneficial. Amendment of conditions should not be
23 freely given and should be denied unless the Applicant meets its substantial burden.

1 The surrounding neighbors have a justifiable concern about what the District intends,
2 both because of past problems with the District as well as with a certain vagueness with the
3 District's current application.

4 And it is clear that many neighbors find the *District's* use of the stadium to be
5 burdensome – the hours, the noise, the lights, the parking, the traffic – affiliated with school-
6 related events. But the District's allowed uses are not at issue, and neighbors' concerns with
7 those uses do not have a bearing.

8 When reviewing the public testimony, both oral and written, there is little or no evidence
9 that *non-district* use of the stadium since 2004 has been problematic. Stated slightly differently,
10 while neighbors have been bothered by the noise, light, etc. of District activities, none of these
11 same problems have been demonstrated with non-district uses to date. This is undoubtedly due
12 to the restrictions imposed through District Procedure 4260P(c) and its restrictions on hours of
13 use, prohibitions on PA systems and limits on lighting to field light only, along with other
14 restrictions. There has been no demonstration that non-district uses to date have been a burden
15 upon the surrounding neighborhood.

16 Although project opponents have not demonstrated that non-district uses to date have
17 been problematic, they express concern that an expanded list of such uses will become so. There
18 is nothing about the list of likely uses – lacrosse, rugby, flag football, drill, cheer, etc. – that
19 suggest any greater impact especially when recognizing that District Procedure 4260P(c) remains
20 in full effect.

21 The District explains that use of the stadium is already significant enough that the
22 requested amendment will not affect the volume of use so much as the diversity of its use,
23 allowing for more and newer forms of recreation without any significant increase in total use.
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1 Both boys and girls lacrosse has grown exponentially in the Olympia area in just the past
2 few years. The same is true of 7 x 7 flag football among young adults. These and related
3 activities were not thought about in 2004 and yet have developed to an equal or greater status
4 than currently allowed uses of the stadium. It is difficult to justify once popular uses over
5 currently popular ones especially when the total amount of use is not significantly increased, and
6 where there is no demonstration that currently popular uses would have a greater impact.

7 As noted in the District's Application Overview, the District is actively seeking to address
8 changing community needs and promote equity and diversity in school policies, including the
9 use of its facilities. The current condition is not consistent with these goals. At the same time,
10 however, the *purpose* of the condition – the avoidance of additional burden on the neighborhood
11 – can still be accomplished through District Procedure 4260P(c) and conditions of approval.

12 City Staff finds that the condition is no longer necessary if the eleven conditions set forth
13 in the Staff Report are imposed on non-district use. The District does not object to these
14 conditions and is willing to acknowledge that expanded use would be limited to those sports and
15 recreational activities consistent with appropriate use on a turf field, while also recognizing
16 priority for youth-related activities, followed by activities with a blend of participants including
17 younger ones. City Staff concurs.

18 Based upon all of the foregoing, I conclude that there has been a substantial change in
19 circumstances since the condition was imposed in 2004 such that the purposes of the condition
20 are better achieved by other means, thus allowing for a more diverse use of the facility without
21 any demonstrated greater burden on the surrounding residential neighborhood. I therefore
22 conclude that the application should be approved subject to the eleven conditions recommended
23 by City Staff together with the additional conditions noted earlier (limited to sports and
24 recreational activities appropriate for a turf field; priority for youth and young adult uses).

1 I respectfully disagree with those who believe that the amendment is not in compliance
2 with the purposes for residential districts, particularly the purpose to "maintain or improve the
3 character, appearance, livability of established neighborhoods by protecting them from
4 incompatible uses, excessive noise, illumination, glare, odor, and similar significant nuisances".
5 OMC 18.04.020(A)(3). To the contrary, I conclude that allowing for more diverse use of the
6 facility, while still retaining the current District policies and adding additional conditions, will
7 achieve greater compliance with this regulation. I further conclude that the amendment is
8 consistent with the City's Comprehensive Plan, including Policies PS2.1 and 2.2 and Goal GS2
9 as well as with the City's current Park's Plan.

10 Accordingly, I make the following:

11 **FINDINGS OF FACT**

12 1. The Applicant, the Olympia School District, seeks to amend the 2004 Hearing
13 Examiner's Decision by eliminating the condition of approval that limits non-district user groups
14 at Ingersoll Stadium. The Applicant does not request any change to the proposed hours of
15 operation or anything in District Procedure 4260P(c) governing the terms of use and operation of
16 the stadium.

17 2. Any Findings of Fact contained in the previous Background, Public Hearing,
18 Preliminary Conclusions, or Analysis Sections are incorporated herein by reference and adopted
19 by the Hearing Examiner as his own Findings of Fact.

20 3. The 2004 Decision limited use of Ingersoll Stadium by non-district users to
21 "Thurston County Youth Football, YMCA and City Parks Track Meets, occasional spot clinics,
22 and Youth Soccer Associations."

23 4. Since 2004 various other recreational uses have expressed interest in using
24 Ingersoll Stadium, most notably girls and boys lacrosse, flag football and, to a lesser degree
25

1 rugby, cheer and drill, as well as other recreational activities including a blending of younger and
2 older participants.

3 5. There has been no demonstration that non-district use of the stadium since 2004
4 has been unduly burdensome to the surrounding residential neighborhood. This is due, in large
5 part, to the imposition of the policies and procedures set forth in District Procedure 4260P(c) and
6 its significant limitations on lighting, noise, hours of use, etc.

7 6. There has been no demonstration that a more diverse group of non-district uses,
8 including those mentioned earlier, would impose any greater burden on the surrounding
9 neighborhood than existing allowed uses, especially taking into consideration the continued
10 application of District Procedure 4260P(c).

11 7. The School District is currently actively seeking to increase diversity and equity
12 in its programs and policies and the use of its facilities. The current limitation on use is
13 inconsistent with these goals and policies.

14 8. As set forth at page 2 of the Staff Report, the SPRC has reviewed the request for
15 consistency with the standards and provisions of the City as expressed in its plans and
16 ordinances. The SPRC finds the project to be in compliance with these standards as it does not
17 represent an expansion of use nor does the project represent a significant change from the initial
18 proposal reviewed in 2004.

19 9. City Staff finds that the project is in compliance with the goals and policies of the
20 Comprehensive Plan including Goal GS2 and Policies PS2.1 and PS2.2.

21 10. The Olympia School District, as lead agency, issued a SEPA Determination of
22 Non-Significance on September 8, 2020, with an appeal period of September 24, 2020. No
23 appeals were received.

1 11. The Staff Report, at page 3, contains Findings relating to the proposal's
2 compliance with the Unified Development Code, Title 18 OMC. City Staff finds that the project,
3 as conditioned, is in compliance with the Title 18. The Hearing Examiner has reviewed these
4 Findings and adopts them as his own Findings of Fact.

5 12. The School District submitted a Traffic Generation Assessment as part of its
6 application (Attachment 2). The Assessment assumes that if the current limitation was removed
7 the non-district use of the stadium would expand use for lacrosse, adult club soccer and other
8 community recreational uses, occurring most days throughout the week and on weekends, with
9 most weekday use in the evening when other traffic volumes have reduced. The Assessment
10 concludes that elimination of the restriction would not result in any operational deficiencies, and
11 that peak hour Level of Service (LOS) would continue to operate acceptably at LOS C.

12 13. The Staff Report, at pages 4 and 5, contains Findings relating to public notice of
13 the hearing. As noted in the Staff Report, notice of the hearing was extended from standard 300
14 feet mailing radius to 1,000 feet in a manner consistent with the 2013 Hearing Examiner
15 Decision. In addition, all previously interested parties, including those who participated in the
16 2004 hearing, were provided personal notice. The Hearing Examiner has reviewed these
17 Findings and adopts them as his own Findings of Fact.

18 14. Significant public comment has been received both for and against the requested
19 amendment as described more fully in the Public Hearing Section.

20 15. City Staff finds that the 2004 condition is no longer necessary to ensure
21 consistency with the Olympia Municipal Code and recommends that the requested amendment
22 be granted subject to the eleven conditions set forth in pages 6 and 7 of the Staff Report.

23 16. The School District has no objection to the requested conditions of approval and,
24 further, acknowledges that expanded use of the stadium should be limited to those sports and
25

1 recreational activities consistent with appropriate use on a turf field and, further, that youth-
2 related sports and recreational activities have priority among users, followed by those sports and
3 recreational activities having a blend of younger and older participants.

4 Based upon the foregoing Findings of Fact the Hearing Examiner makes the following:

5 **CONCLUSIONS OF LAW**

6 1. The Hearing Examiner has jurisdiction over the parties and the subject matter.

7 2. Any Conclusions of Law contained in the foregoing Background, Public Hearing,
8 Preliminary Legal Conclusions, and Analysis Sections or contained in the foregoing Findings of
9 Fact are hereby incorporated herein by reference and adopted by the Hearing Examiner as his
10 Conclusions of Law.

11 3. The requirements of SEPA have been met.

12 4. All requirements for notice of the public hearing have been met.

13 5. The amendment, as conditioned, is consistent with the Comprehensive Plan.

14 6. The amendment, as conditioned, is in compliance with the Unified Development
15 Code, Title 18 OMC.

16 7. The amendment, as conditioned, is in compliance with Chapter 18.04 OMC
17 including OMC 18.04.020(A)(3).

18 8. The conditions imposed herein are appropriate for the protection of the
19 surrounding properties, the neighborhood and the general welfare of the public.

20 9. As conditioned, the amendment will remain in compliance with the requirements
21 for locations of schools. OMC 18.04.060.

22 10. As conditioned, the amendment is consistent with requirements for parks, OMC
23 18.04.060, although these regulations do not apply to the amendment.

1 filed by Ingersoll Stadium users in advance with the District. The management goals and
2 submitted Plans must effectively address those goals and have measurable criteria of success.
3 The District shall create an area within the District's website for posting of such Traffic and
4 Parking Management Plans, and each Traffic and Parking Management Plan shall be posted for a
5 minimum of seven days prior to the scheduled non-district use. (Land Use Appeal Decision
6 Condition 3).

7 2. To minimize lighting of the surrounding properties, except as necessary to ensure
8 safe existing or respond to emergencies, stadium field lighting shall be turned off at or before
9 10:00 p.m. All parking lot lighting shall include appropriate shielding as proposed. (Land Use
10 Approval Condition 3).

11 3. Neither the stadium or sound system nor any portable or secondary sound system
12 shall be used to amplify music for accessory, i.e., "non-district" uses. (Land Use Approval
13 Condition 4).

14 4. To provide City Staff and concerned citizens a means of monitoring and
15 reviewing use of the facility, the District shall maintain a record of authorized facility use,
16 including user's name and that of any representatives, date and hours of use, and description of
17 the use including an estimated number of users. (Land Use Approval Condition 5).

18 5. As it relates to the stadium, the District shall comply with its "Procedure No.
19 4260P(c)" as initially set out in Ex. M-1, Att. B of the 2004 Land Use Appeal file from 2004 and
20 as subsequently amended by the Hearing Examiner Decision (File 03-2397) on April 22, 2013
21 (File 11-0195), unless permission is obtained from the City to modify it. (Land Use Appeal
22 Decision Condition 2 amended to incorporate changes from 2013 amendments to policy).

23 6. Notice of any future applications by the School District for changes in the subject
24 Procedures (District Procedure No. 4260P(c)) shall be provided by mail to all residents within
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1 1,000 feet of the stadium. (Hearing Examiner Decision for Policy and Procedures Modification
2 2013).

3 7. The District shall not rent or make available the stadium for non-district uses for
4 which attendance exceeds total on-site parking available in the stadium and High School parking
5 lots. If the High School auditorium is not in use at the same time as non-district use of the
6 stadium, the total attendance of the stadium and auditorium uses cannot exceed total on-site
7 parking available in the stadium and High School parking lots. (Land Use Appeal Decision
8 Condition 4).

9 8. The noise exemption of WAC 173-60-050(4)(h) includes those activities that any
10 member of the public may attend, whether or not admission is charged. It does not include other
11 District or non-district activities. (Land Use Appeal Decision Condition 5).

12 9. Unless exempted by law, all activities at the stadium and its track and field shall
13 comply with noise regulations found in WAC 173-60 and other applicable law. (Land Use
14 Appeal Decision Condition 6).

15 10. The hours of operation for the practice field shall be consistent with the policies
16 of the School District Procedure No. 4260P(c) which is a set of operating rules governing the use
17 of Ingersoll Stadium intended to reduce the effect of the stadium's use on the surrounding
18 neighborhood. Specific limitations of hours of use are provided for both District and non-district
19 use. (Conditional Use Permit of 2019 Condition 8).

20 11. The practice field will not be scheduled for non-district use when Ingersoll
21 Stadium is scheduled for event uses. The practice field can be used for warmups for the Ingersoll
22 event, or where there is a short overlap, (less than one-half hour) as a District use or non-district
23 use is ending its use and the Ingersoll event is beginning. (Conditional Use Permit of 2019
24 Condition 9).

1 12. Use of the stadium for non-district use shall be limited to sports and other
2 recreational activities consistent with appropriate use on a turf field.

3 13. Youth-related sports and recreational activities shall have priority use among
4 non-district users, followed by sports and recreational activities which include youth and young
5 adult participation.

6
7 Except as so amended, or as may have been amended by prior Order, the 2004 Decision shall
8 remain in full force and effect.

9 DATED this 24 day of November, 2020.



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11 _____
12 Mark C. Scheibmeir
13 City of Olympia Hearing Examiner
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LIST OF EXHIBITS

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- Exhibit 1 Staff Report
- Exhibit 2 Project Submittals – Narrative and Traffic Analysis
- Exhibit 3 Notice of Application/Neighborhood Meeting/Hearing
- Exhibit 4 Legal Notice of Hearing
- Exhibit 5 SEPA DNS and Checklist
- Exhibit 6 2004 Land Use Approval of Ingersoll Remodel
- Exhibit 7 2004 Land Use Appeal Decision
- Exhibit 8 2004 City Memo Consolidating Conditions
- Exhibit 9 2013 District Policy Modification Decision
- Exhibit 10 District Policy 4260P(c) – Ingersoll Stadium and Rental Policies
- Exhibit 11 2019 Conditional Use Permit Decision
- Exhibit 12 Public Comments
- Exhibit 13 Master Distribution List
- Exhibit 14 Public Comment (2020.11.3-11.6)
- Exhibit 15 Public Comment (2020.11.6-11.9)
- Exhibit 16 Public Comment (2020.11.9)
- Exhibit 17 City Presentation
- Exhibit 18 2019 OSD Traffic Analysis
- Exhibit 19 Policy 4260
- Exhibit 20 Procedure 4260P(A)
- Exhibit 21 Procedure 4260P(C)
- Exhibit 22 Procedure 4260P(D)
- Exhibit 23 School District Presentation
- Exhibit 24 Public Comment (2020.11.9)
- Exhibit 25 Public Comment (2020.11.9A)
- Exhibit 26 Comp Plan Memo and Comp Plan Section of 2004
- Exhibit 27 Jan Witt Additional Comment
- Exhibit 28 R. Jetter Additional Comments
- Exhibit 29 Mark Boyer Additional Comments
- Exhibit 30 Jim Lazar Additional Comments
- Exhibit 31 Karen Messmer Additional Comments