

BEFORE THE LAND USE HEARINGS OFFICER
CLACKAMAS COUNTY, OREGON

Regarding an Appeal of a Planning Director Decision Approving an Application to Modify Conditional Use applications Z0160-09 and Z0351-02 to Use a Portion of an Existing Building for Parochial School Uses

FINAL ORDER

Case File No: Z0436-23 Appeal
(Rolling Hills)

A. SUMMARY

1. The owner of the subject property is Rolling Hills Community Church. The applicant is Marc Huchette, Executive Pastor of Rolling Hills Community Church. The applicant is requesting to modify Conditional Use applications Z0160-09 and Z0351-02 to use a portion of the current building for parochial school uses. The applicant proposed a phased approach to opening the school with a maximum number of 150 students using the existing building and parking areas. No expansion of the building is proposed.
2. The subject property is an approximately 40-acre parcel located at 3550 SW Borland Rd., Tualatin, Oregon 97062, also known as T02S R01E Section 29A Tax Lot(s) 500, 600, and 602, along with 601E1 and 500E1.¹ This location is near the intersection of SW Stafford Road with SW Borland Road and the intersection of SW Stafford Road with I-205, with the subject property lying between I-205 and SW Borland Road. The site and adjoining land are zoned Rural Residential Farm Forest 5-Acre District (RRFF-5). To the south is the 400-to-800-foot right-of-way for Interstate 205. Developed land to the east is used for nursery stock production, a retail nursery, and a dwelling that is the residence of the applicant, Pastor Huchette. There are two other dwellings on the site which are used for church-related purposes. To the north across SW Borland Road there are two lots in farm use. Land to the west is used for homes and timber. Land at the SW Borland Road/SW Stafford Road intersection is zoned and used for commercial purposes. SW Borland Road is designated as a minor arterial, and SW Stafford Road is designated as a major arterial. The site is located within the Stafford-Tualatin Valley Community Planning Organization (CPO).
3. The site is currently the location of a church (place of worship) conditionally approved by the County in 1979 on a portion of the site (County File No. CU 06-79).² That decision approved development of the site with a one- and two-story 54,700 square foot building that contained an 800-seat multi-purpose assembly room, classrooms, offices, and ancillary uses, in addition to parking for 620 vehicles. At that time, the site was already improved with three dwellings, two used for church-related purposes and

¹ The County's appealed decision provides this description of the proposal site taken from the County Assessor's Map & Tax Lot(s): "T02S R01E Section 29A Tax Lot(s) 500, 600, and 602, along with 601E1 and 500E1." The Final Order in Z0351-02 describes the subject property as: "T2S, R1E, Section 29A, Tax Lots 500, 600, 602 and 900, W.M. and T2S, R1E, Section 29B, Tax Lot 101, W.M." The hearings officer finds this difference not relevant to this decision, and likely a reference to adjacent properties also owned by the applicant that are not part of this application for a modification of the Final Order in Z0351-02 or Z0160-09.

² County File CE 06-79.

the third as a dwelling. The site was also improved with accessory structures near the dwellings, and was improved with sports fields and courts, vehicle maneuvering areas and a cell tower. This use was expanded through County File No. Z0351-02 (approved April 9, 2023 on reconsideration) to include expansion of the church and use of the site in four phases. However, only phases 1 and 2 were completed within the approval timeline provided in the decision. The applicant completed a roughly 135,000 square foot new church structure, including an assembly room with 2,500 seats, completed additional nursery and preschool classrooms, meeting rooms, kitchen and support services, a café, and bookstore. The applicant also remodeled the prior existing church structure and added about 2,330 square feet to it and has improved about 1,200 of the previously approved 1,630 parking spaces, among other things. In the Final Order for File No. Z0351-02, the hearings officer provided discussion of the identified impacts related to the proposal, discussing traffic and impacts to the area transportation network, including the I-205 scenic corridor and other policies related to the County Transportation System Plan (TSP) and other things, finding that the application should be approved subject to conditions, including imposing mitigation requirements related to the identified traffic impacts to the area.

4. On November 17, 2009, Clackamas County Hearings Officer Joe Turner approved County File No. Z0160-09, an application for a conditional use permit to modify and reauthorize the prior approved but not completed church expansion, essentially again conditionally approving phases 3 and 4 of the planned expansion of the church and providing for an expanded timeline for implementation. Phase 3 included a roughly 10,400 square foot two-story addition containing a 400-seat chapel above a multi-use classroom and fellowship space. Phase 4 included a two-story classroom building containing about 15,700 square feet, additional remodeling, and additional improved parking spaces. Neither phase was completed within the required timeline and no extensions were sought or approved. Neither application File No. Z0351-02 nor Z0160-09 sought or obtained land use approval for a school, although the provision of religious education services in classrooms on the church campus as an accessory use to the church was discussed. The applicant now seeks to modify the prior approved CUPs approved in File Nos. Z0351-02 and Z0160-09 CUP to use the existing completed improvements on site for a K-5 parochial school.
5. The original application for modification of these CUPs was received by the County on November 7, 2023, but was deemed incomplete. The applicant submitted additional materials on various dates in support of the application and the County deemed the application complete on May 3, 2024. The subject property is not located inside an urban growth boundary. Therefore, the 150-day deadline for final action on the application pursuant to ORS 215.427(1) was September 30, 2024. However, the applicant submitted several requests to “toll the clock” on the timeline for final action by the County on this application, submitting additional materials on various dates in support of the application. The deadline was further extended at the hearing at the request of the applicant to provide time for an open record period for submission of additional evidence, rebuttal, and written argument.

6. On December 9, 2024, County Principal Planner Joy Fields approved the application subject to conditions of approval. On December 19, 2024, Randall Yamada, Chairperson for the Stafford-Tualatin Valley CPO submitted an appeal of the decision, asserting that the CPO had never heard of nor seen a completed application prior to the notice of decision approving the application. On December 23, 2024, Stafford Investments, LP and Robert L. Fallow, owner of an adjacent property, also submitted an appeal of the decision asserting that the modification process elected by the applicant and allowed by County staff is insufficient per the terms of the final order issued in File No. Z0351-02, also asserting that File Nos. Z0351-02 and Z0160-09 should not be modified as they have expired.
7. On January 16, 2025, the Hearings Officer conducted a public hearing to receive testimony and evidence about the applicant's proposal for verification and/or alteration/change of a nonconforming use. Prior to ending the public hearing and closing the record, the Hearing Officer asked whether any of the parties or members of the audience wanted an opportunity to provide additional evidence, arguments, or testimony. At the request of the parties, the Hearings Officer agreed to hold the record open as follows: one week (until 4:00 pm Thursday January 23, 2025) for any party to submit additional written evidence, argument, or testimony, for an additional one week (until 4:00 pm Thursday January 30, 2025) for any party to submit rebuttal of new evidence submitted during the initial open record period, and for an additional eight days (until 4:00 pm Friday February 7, 2025) for the applicant to provide a final responsive written statement, to include no new evidence. The applicant agreed to extend the timeline for final action in this matter by an additional 30 days to provide time for this open record period. At the conclusion of the open record period, the Hearings Officer approved the application subject to Conditions of Approval.

B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony and evidence at the January 16, 2025 public hearing about this application and during a subsequent open record period, including submittals identified as Exhibits 1-31. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex-parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the County's staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.

Prehearing Submissions and Comments

2. The County received this application for modification to an approved Type II or II permit or its conditions on November 7, 2023; however, on November 17, 2023 County staff deemed the application incomplete, mailing notice to the applicant identifying missing information required for a complete application.

3. The applicant submitted additional information and required materials on May 1, 2024, May 3, 2024, May 14, 2024, June 20, 2024, July 9, 2024, November 20, 2024, and December 3, 2024. The original application requested approval for a daycare with up to 54 students, a preschool with up to 100 students, and a K-5 parochial school with up to 150 students, each with associated staff. The December 3, 2024 submission by the applicant clarified that the applicant is requesting approval only for a parochial school with up to 150 students, consistent with the study described in a November 19, 2024 Transportation Analysis Letter submitted by the applicant.
4. Notice of the application for modification was sent to applicable agencies and owners of property within 500 feet. However, although the Stafford-Tualatin Valley Community Planning Organization (CPO) is the CPO for the area, County staff sent the notice to a different CPO with a similar name by mistake. Prior to issuance of the staff decision approving this application, comments were received from two members of the public, County Transportation and Engineering staff Ken Kent and Christian Snuffin (concerning scope of required traffic study), and the Oregon Water Resources Department District 18 Watermaster (concerning available water for proposal).
5. Linda Unti is part of the Schaber family that homesteaded this area along Athey Creek and opposes this application. Her family has three homes on their property, at 3600, 3700 and 3824 SW Borland Road in Tualatin (to the west of the Rolling Hills Church property). Ms. Unti points to the home at 3600 SW Borland Road where part of her family resides, stating this home shares a property line with the Rolling Hills Church and will be impacted the most by this proposal. Specifically, she points to noise, asserting the voices of children and staff at recess or other outside activities will cause excessive noise that should not be tolerated in a rural setting, and could drive potential future rental value of the property down in the future. Ms. Unti also points to traffic and traffic control issues, asserting that parents will drive to the school twice a day causing more congestion and potential accidents on SW Borland Road and further asserting Rolling Hills Church has no traffic control at entrances and exits.
6. Rob Fallow is the General Manager of Stafford Investments, LP, the owner of five acres of property at 20383 SW Stafford Road located just to the east of the Rolling Hills Church property and on the east side of Athey Creek. Mr. Fallow submitted several written comments inquiring about the application, stating that the Church previously sought land use approval for a school and was denied due to transportation impacts. Further, Mr. Fallow points to a service road that bisects his property that was established when I-205 was constructed to provide access to the parcel of land immediately to the west of his property, a reference to an earlier issue with respect to the Church seeking to expand use of that service road and issues related to his right to unencumbered access along this roadway from both sides. Mr. Fallow opposes this application, describing existing traffic difficulties accessing Stafford Road from the service road and asserting that any additional traffic would further add to the issue. Mr. Fallow also contends that approval of the proposal will have negative financial implications. He cites future planned changes to the location of the service road and

points to other developments that have impacted area traffic, including expansion of a middle school to a high school and sports complex.

7. On December 9, 2024, Joy Fields, Principal Planner for Clackamas County, issued notice of decision approving this application. On December 19, 2024, Randall Yamada, Chairperson of the Stafford-Tualatin CPO, submitted an appeal of the decision stating that the CPO had never heard of or seen the application prior to the notice of decision for approval. Mr. Yamada contends that the residents of the Staff Community and the general public were not made aware of the proposal and were prevented from commenting on the project or requesting additional information, Mr. Yamada states: “The purpose of this appeal is to reinstate the time normally allowed for public comment and agency response to these concerns.” Mr. Yamada points to policies for public engagement within the Statewide Land Use System, County, and City Comprehensive Plans and Ordinances in support of his contention that the process used here is inadequate.
8. On December 23, 2024, Rob Fallow of Stafford Investments, LP, submitted an appeal of the decision asserting the modification process elected by the applicant and allowed by County staff is insufficient and inadequate, and inconsistent with the terms of the Final Order issued in Z0351-02. Mr. Fallow also contends that neither Z0351-02 nor Z0160-09 should be modified as they have expired.
9. After the appeals the County received several additional written comments from members of the public. Sally Visher submitted comments opposed to the application and pointing to the Rolling Hills Community Church advertisements on their website for several existing uses of the site including Tualatin Food Pantry, Borland Free Clinic, pickleball courts, Hope’s Closet, Hope’s Table, The Father’s Heart Street Ministry, Family Promise of Tualatin Valley, Wash and Worship, and NW Children’s Outreach. Further, Ms. Visher points to other neighborhood schools within 1-2 miles from the site, including: Arbor School (190 students), Stafford School (323 students), Riverside High School (112 students), Three Rivers School (110 students), Southlake Preschool, Resurrection Catholic Parish School (100 students), and Stafford Academy (45 students). She contends there are already enough schools in the neighborhood, with resources already stretched and traffic and pollution increasing, further asserting that the Church (being tax exempt) is not paying for their impact on the neighborhood or County.
10. Several additional written comments were submitted expressing opposition to the application, citing concerns with increased traffic, noise, and potential decreases in property value or potential additional costs to area property owners. Commenters also pointed to the modification process, asserting area residents should have had the chance to review and comment concerning the applicant’s traffic impact study. Further, commentators pointed to the number of other schools already operating in the area. The County also received written comments expressing support for the application, citing the need for another private Christian school in the area.

11. Jesse Burgess, attorney for appellant Mr. Fallow and Stafford Investments, LP, submitted a January 15, 2025 memorandum detailing the reasons for the appeal and providing supporting legal arguments. First, Mr. Burgess argues that the proposed school use requires a new CUP, rather than a modification of the church's prior approved CUP. He points to the original withdrawn decision for Z0351-02 from 2002 that included discussion, findings, and conditions related to the school use of the permit. This original withdrawn decision contained specific limitations on school use of the site, discussed a dispute between church staff and County staff concerning whether the proposed use included a private school, and noted that the church proposal included roughly 70,000 square feet of the completed project devoted to educational and classroom purposes.
12. Mr. Burgess notes that the hearings officer included discussion in the withdrawn decision for Z0351-02 describing the education facilities as accessory to the church use and clarifying that the CUP did not authorize "a general educational curriculum, like that offered in a public school, without review and approval of a conditional use permit for that purpose." Mr. Burgess also provides the footnote to this finding that: "If the applicant proposed daily classes that included subjects traditionally taught in public schools, the hearings officer would find a separate permit is required." However, Mr. Burgess does clarify that the church appealed this original decision and it was withdrawn by the County and reissued following reconsideration without any direct discussion, findings, or conditions related to the intensity of the school use. Mr. Burgess also notes that the 2009 decision for Z0160-09 only concerned modifying and reauthorizing phases 3 and 4 of the Z0351-02 CUP and similarly does not discuss the school uses on the site. Mr. Burgess contends that the church's proposal here exceeds a school use that is accessory to the primary church use and therefore is a new use requiring a new CUP.
13. In his January 25, 2025 memorandum, Mr. Burgess addresses the County's zoning ordinance, noting that "places of worship" are primary uses in the RRFF-5 zone, subject to ZDO Section 804, whereas school uses require a CUP subject to ZDO Section 805. Mr. Burgess further asserts the approval for the proposed use is subject to ZDO 1203.03 requirements for new conditional uses, requiring a Type III application, and not the modification of the church CUP pursuant to the Type II process utilized here, disagreeing with County staff that the application here modifies a previously approved CUP and asserting there is a difference between the accessory school use related to the church and the school use proposed here.
14. Mr. Burgess points to the ZDO 1307.04.A.2. description of the differences between Type II and Type III applications: "Type II and Type II-E permits are administrative in nature and involve land use actions governed by standards and approval criteria that generally require the exercise of limited discretion" whereas Type III permits are "quasi-judicial in nature, and involve land use actions governed by standards and approval criteria that require the use of discretion and judgment." Further, "The Type III procedure is a quasi-judicial review process where the review authority receives testimony, reviews the application for conformance with the applicable standards and approval criteria, and issues a decision." Mr. Burgess also points to the increased

public noticing requirements for Type II applications, pointing out that Type II applications in the RRF-5 zone have a noticing distance of 500 feet from the subject property whereas Type III applications require a noticing distance of ½ mile.

15. Mr. Burgess submits an alternative argument that the prior permits expired and cannot be revived and therefore this application was erroneously processed and decided as a Type II land use decision when a new Type III CUP application was required. Here, Mr. Burgess points to the Final Order for the Z0351-02 reconsidered decision and its statement that the conditional use approval was valid for two years and was implemented when all necessary permits for Phase 1 were secured and maintained, contending this did not occur. Similarly, Mr. Burgess points to the Final Order for the Z0160-09 decision noting it provided for a five-year implementation period for Phase 3 and a 10-year implementation period for Phase 4, yet it appears that neither phase was actually completed and no extensions were obtained, therefore the approvals expired in 2019. Mr. Burgess also points to language in the Final Order for Z0160-09 stating that the 2003 CUP approval expired and is no longer effective. The hearings officer discussed this argument with Mr. Burgess at the hearing, clarifying that Mr. Burgess is not arguing that the development approved by the Z0351-02 CUP for Phase 1 was not completed or that the church use was discontinued. Mr. Burgess further argues, however, that the Type II modification process used here under ZDO 1309 is intended to provide applicants with an opportunity to modify the provisions of an approved CUP during the period the land use decision is effective, but not after expiration.
16. In his January 25, 2025 memorandum, Mr. Burgess contends that even were the applicant's proposal correctly processed as a Type II application for a modification of a prior conditional use approval, there is insufficient evidence in the record that the proposal satisfies all applicable criteria to allow a modification under ZDO Section 1309. Mr. Burgess points out that the prior approvals were for a church, with the school use only accessory to the approved church use, and not for the full-scale school use now proposed. Mr. Burgess asserts that a change from a limited accessory school use to a full-time school use is a significant increase to the intensity of the use. He points to Saturdays and Sundays as typically associated with the biggest impact a church has on traffic congestion and public facilities, as opposed to the Monday to Friday weekday impacts of the proposed school use. Mr. Burgess points to the traffic impact analysis submitted by the applicant that estimates a 150-student school will generate an estimated 616 daily weekday trips, contending these weekday trips create different impacts compared to the church's weekend trips.
17. Mr. Burgess also contends that the traffic impact analysis submitted by the applicant is inadequate in several areas. He points to the impacts of the three other area schools and asserts these additional impacts are not accounted for in the applicant's traffic impact analysis. Mr. Burgess notes that the applicant's traffic impact analysis only analyzes impacts to Borland Road and does not include Stafford Road or the Stafford Road – I-205 Interchange. Mr. Burgess also points out that the traffic impact analysis represents that there are approximately 2,500 parking spaces on the church property, contending that Google Earth shows only approximately 1,000 parking spaces. He further criticizes the traffic impact analysis' representation that: "Approximately 60

percent of the site trips will travel to/from the west along Borland Road” while asserting that the data is taken for only one observation date. Mr. Burgess further points to the County TSP, asserting that the traffic impact analysis fails to address applicable provisions, fails to consider impacts to Stafford Road, a designated scenic road, and otherwise fails to provide for any mitigation for the proposal’s impacts as required by TSP policies.

18. Mr. Burgess’ January 25, 2025 memorandum also reviews some of the history behind the concerns expressed by the appellant Mr. Fallow and Stafford Investments, LP regarding the ODOT service road that runs through this appellant’s property. Mr. Burgess requests that any decision approving this application clearly state that it does not approve the church using the ODOT service road to access Stafford Road, nor do any of the prior related County land use decisions.
19. Appellant Randall Yamada/Stafford-Tualatin Valley CPO submitted additional written comments in opposition to the application, pointing to concerns with traffic and concerns with urbanization.

January 16, 2025 Hearing

20. At the hearing, Joy Fields, Principal Planner and Planner of Record for this application discussed the December 9, 2024 staff decision issued in this matter and related exhibits, providing a presentation and discussion of the application, the County’s review of the application, approval of the application, and discussion of the appeal.
21. Ms. Fields pointed to the application, noting the applicant requested approval to modify Z0160-09 and Z0351-02 to use a portion of the current building on the site for parochial school purposes. She pointed to the applicant’s proposed phased approach to opening the school with a maximum number of 150 students using the existing building and parking areas, with no expansion of the building proposed, noting the application was approved with conditions. Ms. Fields explained that the applicant church currently provides school use as accessory to the existing church use, and this accessory school use was approved in the earlier land use decision. Ms. Fields states there are approximately 1500 people utilizing the campus Tuesday through Sunday for religious education purposes. Ms. Fields further explained that the current application seeks to modify the prior CUP conditions to establish K-5 school use on the site.
22. Ms. Fields provided a review of the evidence initially provided by the applicant. She noted that, with respect to the potential impact of approving the application, no changes to the building were proposed, and per the applicant’s description, outdoor spaces to enhance a school, including a playground and sports field, already existed. Further, she pointed to the applicant’s statement that the number of people utilizing the church, even with a daycare/preschool/school, would still be fewer than used the site in the mid-2000’s. Further, Ms. Fields noted that there is abundant parking available on the site. Ms. Fields shared a slide with this photo of the site:



23. Ms. Fields explained that the site consists of several tax lots zoned RRFF-5, and the site is currently a place of worship (Rolling Hills Community Church) that was expanded through Z0351-02 and Z0160-09 to include a church containing a total of 218,130 square feet and fixed seat capacity for 2500 people in the assembly room. Ms. Fields noted that ZDO Section 316 regulates the RRFF-5 district. She pointed to Table 316-1 which identifies Schools as a Conditional Use subject to ZDO Section 805, also noting that in Section 805 the only standard is that the minimum side setback for a school is 25 feet. Ms. Fields explained that this application is for a modification of a previously approved Conditional Use. She noted that an application for a modification of a previously approved Conditional Use is subject to ZDO Section 1309 and provided additional discussion of the specific approval criteria.
24. Ms. Fields shared information from the applicant’s traffic impact analysis for the impacts of the proposed school K-5 school, and the conclusion that the impacts to the existing transportation system within the site vicinity are expected to be minimal and the new site trips are not expected to significantly alter the operation or safety of the existing transportation facilities. Ms. Fields shared a slide with this trip generation data:

Table 2: Trip Generation

ITE Code/Use	Intensity	Morning Peak Hour			Afternoon Peak Hour			Evening Peak Hour			Daily Trips
		In	Out	Total	In	Out	Total	In	Out	Total	
530 - Private School (K-8)	150 Students	85	67	152	42	48	90	18	21	39	616

25. Ms. Fields provided a review of procedural requirements for this type of modification application contained in ZDO Table 1307-1, and the staff approval of Z0436-23 with conditions reporting that staff found the application was consistent with all applicable criteria.
26. Don Carter, a Board Member of the Rolling Hills Community Church, provided testimony in support of the application and the need for the school, asserting that it is important to the religious mission of the church and also that other area schools are

full. Marc Huchette, Executive Pastor of the Church, also provided testimony in support of approving the application and corroborated Mr. Carter's testimony that there is a consensus that other Christian education schools in the area are full. Pastor Huchette testified that three other schools have approached the Church regarding expansion to provide Christian education services. He described the current institutional use of the site, the existing CUP, and how the church provided significant traffic mitigation already. Pastor Huchette testified that there are no plans to use the service road, and a connection from the church campus to the service road was never completed. He also testified that the church has experienced a 78% decrease in attendance and the site has much less use than at the time the expansion of the church was approved. Mr. Huchette describes the current application seeking approval for a K-5 Parochial school as important to the Church's religious purpose.

27. Myla Cross is a civil engineer and transportation analyst with Lancaster Mobley. Ms. Cross provided testimony concerning the Transportation Analysis Letter (TAL) she prepared with Jennifer Danziger, PE, and Lancaster-Mobley submitted on behalf of the applicant. Specifically, she discussed how the scope of the study was developed through consultation with County Engineering and Development staff member Christian Snuffin and included on-site queue analysis and left-hand turn lane analysis for 150 students and related faculty. Jennifer Danziger, PE, is a registered professional engineer with Lancaster Mobley and provided her stamp for the applicant's TAL. She provided corroborating testimony that the TAL includes all trips for students and staff associated with the applicant's proposal. Ms. Danziger testified that the data for the study was collected when area schools were in session, with one exception. Ms. Danziger further testified that the traffic study results show p.m. peak hour traffic is less than the 2009 update study of peak hour results conducted by Lancaster-Mobley for the applicant's previous submittal [File No. Z0160-09]. Ms. Danziger also testified that the traffic study results show the SW Borland Road access is adequate for the proposed use and the traffic queueing related to this proposal will be accommodated on site. The following is taken from the applicant's TAL and shows the subject property and site vicinity, adding identifying captions. Neighboring residential properties share a property line with the site and face a large parking lot, an internal road, and the back of the church, with the existing sports fields located on the exact opposite side:



Figure 1: Aerial Photo of Site Vicinity (Image from Google Earth)

28. The applicant's attorney, Wendy Kellington, pointed to the CUP for the Rolling Hills Community Church, stating that the use has continued uninterrupted. She points to the church completing the initial phases of construction of the new church [File No. Z0351-02] including expending the \$1.5 million required for the traffic mitigation project. She asserts that the application to modify the existing Cup is within the requirements for the County ZDO and questions the nature and relevance of the notice issue. With respect to the traffic issue, Ms. Kellington notes that the church provided significant traffic mitigation related to obtaining approval for the CUP associated with increasing the size of the church. Ms. Kellington pointed out that the church was mitigating for a much larger impact, expecting as many as 10,000 people to travel to the church each week. She notes that the current use of the church is much lower than it was in 2009, when the prior land use action [File No. Z0160-09] was approved and the related traffic study completed. Ms. Kellington points to testimony that the church currently provides bible education classes during the week for approximately 150 people every day as an accessory use. She states that these current activities will not continue once the school use is approved and will be replaced by the proposed school use, resulting in at most a nominal increase in vehicle trips to the church. Ms. Kellington noted that the applicant will accept a condition of approval requiring that the current bible classes will be discontinued during school use. Ms. Kellington also reiterated that use of the ODOT service road is not part of this proposal, and the applicant also agrees to a condition of approval to that effect.
29. The first appellant, Mr. Randy Yamada on behalf of the Stafford-Tualatin Valley CPO, testified concerning the reasons for the appeal. First, Mr. Yamada explained that the CPO did not actually receive any notice of this application, only learning of the application when receiving notice of the County's decision approving the application. By submitting this appeal, the CPO seeks to provide input into the process for reviewing the application. Second, Mr. Yamada contends that the Type II modification process used for this application provided for too short a notice period and too few opportunities for the CPO to meaningfully review the application and participate in this land use process, also asserting that the Type III process is already too short. Mr. Yamada points to the community's desire to protect this rural area consistent with the Urban Reserve Agreement. He points out that the school services could be located within one of the urban city areas with safer streets that, rather than this rural location, describing Borland Road as a two-lane road with the second-highest volume of traffic in the community. He also questions why the church appears to already provide school-type activities and uses, noting that while a church is allowed within this zone, a school is different and is not necessarily required as an approved use. The hearings officer discussed the notice issue with Mr. Yamada, and Ms. Fields explained that the notice intended for Mr. Yamada and the Stafford-Tualatin Valley CPO was mailed to a different CPO by mistake.
30. The second appellant, Mr. Fallow on behalf of Stafford Investments, LP, also points to the lack of notice with the Type II modification process, asserting that a significant number of area residents never received notice of this land use application. This appellant's attorney, Jess Burgess, asserts that a new CUP application is required, not

just a modification of the existing CUP, pointing to the requirements of ZDO 1309. Mr. Burgess asserts that the new proposal is inconsistent with the provisions of the prior approval. Further, he points to the differences in notice requirements, levels of review, and the requirements for a public hearing a new CUP would provide. Mr. Burgess points to the criteria of ZDO 1309 and contends that this application proposes a significant increase in intensity of use that is outside the scope of the prior approval. Further, he points to additional traffic and road use. Mr. Burgess argues that the scope of the transportation impact analysis conducted is inadequate, pointing out that it focused only on SW Borland Road, and asserts that the study should have also considered impacts to SW Stafford Road and the I-205 interchange. Further, with Mr. Burgess points to the study's traffic count and asserts that one of the area schools was not actually in session when the traffic count was conducted. Mr. Burgess points to the County TSP requirement that the safety of all modes of traffic must be considered and notes that the site uses rural roads that are aging and lack sidewalks or bike lanes.

Open Record Period Submissions

31. The applicant's attorney, Ms. Kellington, submitted a copy of the agreement between the County and Rolling Hills Community Church regarding the church providing the funding for the public improvement project at the intersection of Stafford Road and Borland Road providing the traffic mitigation required by File No. Z0351-02, showing the church met the requirements of the CUP to obtain its certificate of occupancy.
32. The appellant Mr. Yamada on behalf of the Stafford-Tualatin Valley CPO submitted additional written comments in opposition to this application, providing copies of several documents in support of his arguments. Among other things, Mr. Yamada submitted copies of the Stafford 5 Party Intergovernmental Agreement (IGA) forming the Stafford Urban Reserve, and a previous version of the Clackamas County ZDO. Mr. Yamada argues that the zoning ordinance in place at the time of the original Conditional Use Approval, and in effect at the time the IGA was adopted, defined Church and School separately and therefore each use requires a separate conditional use application. He contends that the applicant's CUP cannot be modified to include the school use.
33. Attorney Jesse Burgess, on behalf of the appellant Mr. Fallow of Stafford Investments, LP, submitted an additional memorandum with written comments and legal argument, primarily in opposition to the procedure whereby the County approved the school use as a modification of an existing CUP, rather than processing the proposed school use as a Type III CUP application. Mr. Burgess points to the site as within Metro's Borland Urban Reserve Area and also asserts there are "well-known issues with traffic in this area" that implicate both County Ordinance and Comprehensive Plan provisions that were omitted in the Type II process. Mr. Burgess points to the greater notice area and public hearing requirements for Type III CUP applications, contending that these procedures were more likely to produce greater public input. Mr. Burgess also points out that a new CUP application must meet the requirements of ZDO Section 1203, whereas an application for modification is not subject to these requirements, further

asserting that the findings within the staff decision and the details provided by the church are insufficient to demonstrate compliance.

34. Mr. Burgess' memorandum also points to the County's Transportation System Policies within Chapter 5 of the County's Comprehensive Plan, contending these policies were not addressed. Mr. Burgess notes that the church has a sidewalk along its frontage for Borland Road, but contends the proposed use still requires the County to "place conditions on the development to ensure adequate services and facilities prior to or concurrent with development" will apply to the project. Further, Mr. Burgess contends that neither the staff decision nor application materials address how the proposed school use is consistent with planning and zoning the area for future inclusion within the Urban Growth Boundary.
35. The applicant, Marc Huchette, submitted additional written comments and details concerning the church's current and proposed uses of the site in support of the application. Pastor Huchette explained that current weekday use of the church's building includes four ongoing bible study events during the week, totaling 760 people at the site weekdays Monday thru Friday during the proposed school hours. Pastor Huchette asserts that these events result in 152 vehicle trips each day, pointing out that these events will no longer be held during school days and hours. Pastor Huchette also describes the religious mission of the church and the importance of the school to fulfilling that mission.
36. Pastor Huchette points to the initial approval of the 2500 seat capacity assembly hall and 1200 parking spaces, with the church planning for four full Sunday services totaling close to 10,000 people, and the related traffic mitigation and infrastructure required to accommodate this degree of expansion. He describes the \$1.5 million the church invested in the Stafford/Borland roundabout to mitigate the expected traffic, noting that the roundabout was already a planned County capital improvement project that the church paid for, providing related documentation for this and for the church's occupancy permit. Pastor Huchette also again reiterated that the church has no plans to use the service road off of Stafford Road for the school. Pastor Huchette stated that, if approved, they are supportive of these three conditions referenced during the hearing that address concerns raised by Mr. Burgess:
 - Existing weekly events that are currently scheduled during the weekday school days/hours would no longer occur during weekday school days/hours.
 - There is no current or planned development to use the ODOT service road off of Stafford for any kind of traffic mitigation for the proposed school.
 - If the church wanted to expand beyond a k-5 to a k-12, a separate conditional use application would be required.
37. Pastor Huchette also submitted "Transportation Analysis Letter Addendum #1 – Case File No. Z0436-23" dated January 23, 2025 by Myla Cross and Jennifer Danziger, PE, of Lancaster-Mobley. In this memorandum Ms. Cross and Ms. Danziger respond to comments and questions posed at the public hearing concerning the original TAL submitted in support of this application. They point to County Roadway Standards and note that the scope of work for the Transportation Analysis Letter related to the

applicant’s proposed school use was coordinated with County staff to include trip generation and assignment, a safety analysis including sight distance, a crash history evaluation, discussion of on-site queuing, and an operational analysis at the main site access to ensure the existing westbound left-turn lane is adequate for the proposed use. Further, Ms. Cross and Ms. Danziger reported that based on the projected trip generation for this proposal and the surrounding transportation network no other intersections were determined required as part of the study area. They address concerns regarding why the intersections of SW Borland Road and SW Stafford Road, and the SW Stafford Road intersection were not included, explaining that the intersection of SW Borland Road and SW Stafford Road serves approximately 25,000 vehicles per day. Ms. Cross and Ms. Danziger point out that the proposed school is expected to contribute fewer than 250 added trips to the intersection each day, or an increase in traffic of less than 1%. They point out that while the County does not utilize a specific threshold, most agencies request analysis for projected traffic increases of more than 5% and ODOT uses a peak hour threshold of 50 trips and a daily threshold of 300 trips as the basis for requesting analysis, contending that the limited scope of the study for this proposal is reasonable.

38. In their memorandum, Ms. Cross and Ms. Danziger note that one of the three schools located within one mile of the Rolling Hills Community Church, the Arbor School of Arts & Sciences, was not in session at the time the traffic volumes for the original TAL were collected. They adjusted the existing and future expected volumes in the TAL to account for the traffic from the Arbor School of Arts & Sciences, providing the following revised table of trip generation estimates, updating Figure 2 from the original TAL:

Table 1: Trip Generation Estimates – Arbor School of Art & Sciences

ITE Code	Intensity	Morning Peak Hour			Afternoon Peak Hour			Evening Peak Hour			Daily Trips
		In	Out	Total	In	Out	Total	In	Out	Total	
530 - Private School (K-8)	190 Students	108	84	192	54	60	114	23	26	49	780

39. In their memorandum, Ms. Cross and Ms. Danziger also provide revisions to their operational and queuing analysis to include the volumes from the Arbor School of Arts & Sciences for morning, afternoon, and peak hours stating the study is consistent with County standards. They conclude that the site access is projected to operate within the performance standards under all analysis scenarios, and the 95th percentile queue lengths are not projected to exceed the available storage. Ms. Cross and Ms. Danziger conclude that the proposal is anticipated to have minimal impact on the surrounding transportation network, the revised operational and queuing analysis shows the study intersection still operates within standards and no queuing issues are anticipated even with the additional traffic from the Arbor School of Arts & Sciences. They did not recommend any traffic or queuing mitigation.

40. Attorney Wendy Kellington, on behalf of the applicant, submitted additional materials and argument during the second open record, or “rebuttal” period, in support of the application. Ms. Kellington submitted a copy of an approved 2005 CUP modification, File No. Z0449-05-C, responding to Mr. Yamada’s claim of permit expiration. These

materials relate to the church fulfilling its obligation to complete the improvements to the Stafford Road/Borland Road intersection as mitigation for the traffic impacts of its approved expansion of the church.

41. The applicant, Marc Huchette, also submitted additional written comments and details concerning the church's completion of the requirements for the File No. Z0351-02 CUP. Specifically, Pastor Huchette states that everything related to "Phase 1" was completed, with the exception of the access road the church had intended to build. Pastor Huchette explained that the stream crossing structures were built to connect the church directly to Stafford Road, but the County and ODOT stopped that project. Pastor Huchette also states that everything described in "Phase 2" was completed. Pastor Huchette reports that the accessory building for a chapel and classrooms that was approved for "Phase 3" was never started, clarifying that this was intended to be a separate building. Pastor Huchette also reports that "Phase 4" was partly completed, explaining that the additional approved classroom building was never added on to the building, but parking and driveway revisions were completed.
42. Attorney Jesse Burgess, on behalf of the appellant Mr. Fallow of Stafford Investments, LP, submitted additional materials and argument during the second open record, or "rebuttal" period, responding to the additional filing by the applicant in which the church stated that it supports three proposed conditions for approval of its school. Mr. Burgess also submitted three proposed conditions, stating that if all three conditions are added to a decision approving this application, then the appellant Mr. Fallow of Stafford Investments, LP will no longer pursue its appeal. The proposed conditions are:
 - The access points for all church- and school-related activities shall be limited to those proposed in the Application. No access through existing ODOT access roads to Stafford Road shall be permitted. Additional access points shall not be permitted without approval of a new Conditional Use permit.
 - No further modifications of any Conditional Use permit for the church or school shall be permitted unless those modifications do not increase the average daily trips on any day, and do not increase trips during the AM or PM peak hours. No expansion of the school in terms of grade levels offered or student enrollment shall be allowed without a new Conditional Use permit. Any new facilities within the church property, including but not limited to sports fields and related accessory uses, may be permitted only as new uses.
 - No weekday church activities will be permitted during school hours.
43. Attorney Wendy Kellington, on behalf of the applicant, submitted a final written argument during the third or "last word" open record period. Ms. Kellington argues that the applicant's proposal meets the approval criteria for "modifications of an approved Type II or III land use permit, or conditions." Ms. Kensington discusses the requirement that: "A modification shall be consistent with the prior approval" by pointing to the similarity between the proposed religious K-5 school with the current use of the site for providing religious instruction, with no increase in building size, density or intensity of use, or off-site impacts. She contends that the modification need not be exactly the same or exactly equivalent to be "consistent" with the approved CUP within the

meaning of the ZDO. Ms. Kellington points out that the proposed religious K-5 school will occur in classrooms approved for religious instruction with no change to the building footprint. She contends that the number of people using the church facilities during school days and hours will be less than the number of people currently using the same areas during the same days and hours under the CUP the applicant is seeking to modify, and points to the Church's willingness to accept a condition of approval to this effect. Ms. Kellington argues that this use is "consistent" within the meaning of ZDO 1309.01A.

44. Ms. Kellington points to the applicant's transportation study prepared by Ms. Cross and Ms. Danziger, noting that the applicant evaluated the transportation impacts of its proposal consistent with County requirements and asserting that the planning director correctly determined that all transportation standards were met. Ms. Kellington points out that the applicant's transportation study also remains the only evidence in the record regarding the impact of the applicant's proposal on the relevant transportation facilities. Further, Ms. Kellington points out that the prior approvals were for a church with religious instruction within a facility with more than 30 classrooms, contending that religious instruction in classrooms was always contemplated by the prior applications and approvals and is consistent with the current proposal.
45. Ms. Kellington agrees that the Z0351-02 CUP contemplates the church providing educational services in its facilities that are largely religious in nature and does not authorize the church to offer a general education curriculum like that offered in public school without review and approval of a conditional use permit for this purpose. However, Ms. Kellington asserts that the application submitted and under review here is exactly the required proposal to provide school services contemplated by the earlier approvals. Further, Ms. Kellington points to the school itself as an extension of the religious mission of the church and as such is consistent with the current use of the site and an appropriate modification of the approved CUP. She also points out that under the County's zoning ordinance, places of worship and schools are both considered institutional uses and appropriately approved by staff as a modification of the existing church institutional use within the existing facilities. Ms. Kellington contends that the Planning Director's analysis correctly finds the proposed modification is consistent with the approved CUP and the County's ZDO, pointing to the related findings in the original decision appealed here.
46. Ms. Kellington addresses assertions by appellants regarding whether approval of the proposal results in an increase in the intensity of use. She cites the specific language of ZDO Section 1309 Modification, C. "*A modification shall not result in any of the following:*"... "*4. An increase in the density of development (residential or recreational use), or intensity of use, as demonstrated by a change in occupancy rating requiring substantial modifications to structures.*" Ms. Kellington notes that this standard has two prongs: first that the proposed modification causes a change in occupancy rating, and second that the proposed modification requires substantial modifications to structures. She agrees that the County *may* require a change in occupancy rating for a portion of the structure used by students but contends that the proposed modification will not result in any substantial modifications to the existing structure. With respect to a

possible requirement for a change in occupancy, Ms. Kellington asserts that the church already has an approved educational accessory use for more than 6 students in the existing 30 classrooms and therefore a change in occupancy may not actually be required either.

47. Ms. Kellington also addresses assertions by appellants regarding increased traffic or the use of public facilities. She points to existing educational use of the church facilities during school hours and days, noting the proposal involves essentially trading the existing use on the same weekdays for the proposed school use, and therefore the proposed school will not cause an increase in traffic congestion nor increased use of public facilities. Ms. Kellington further argues that the standard is “whether the proposed modification will cause increased traffic congestion or increased use of public facilities *beyond what is approved in the underlying decisions being modified.*” Ms. Kellington points out that the 2002 and 2009 CUP approvals the church received authorized a much larger amount of traffic congestion and public street use than has actually occurred. She further reiterates that in connection with the approved CUP, the County required the applicant to mitigate for a church composed of 10,000 congregants by providing \$1.5 million to build the Stafford/Borland Road intersection project. Ms. Kellington points to Pastor Huchette’s testimony that while the church’s attendance prior to COVID averaged around 5,000 on Sundays and 2,800 during the week, attendance has significantly dropped post-COVID to around 1,100 on Sundays and about 1,000 people on average during weekdays. Ms. Kellington also addresses the concerns raised by the appellant Rob Fallow and Stafford Investments, LP regarding whether the church is again seeking to use the ODOT service road as an access to the church, reiterating the applicant’s statements that it is not and is willing to accept a condition of approval to that effect.
48. Ms. Kellington addresses several other arguments raised in opposition to this application. With respect to appellant Randy Yamada’s assertion that the application should not be approved because the County should not allow plan or zone amendments in this urban reserve area, she points out that the applicant is not seeking a plan or zone amendment. Similarly, Ms. Kellington addresses Mr. Yamada’s assertion that no school can be approved as a modification to the CUP by pointing to the County’s code providing for modifications of approved CUPs, asserting that the proposal meets the modification criteria and therefore should be approved.
49. Ms. Kellington addresses several arguments submitted by Mr. Burgess concerning the CUP modification process by essentially contending that the modification process utilized by the County here is appropriate for the scope of this proposal. With respect to arguments that the CUPs expired and therefore no modification should be possible, Ms. Kellington asserts that Z0351-02 has not expired and remains in effect, pointing to the express implementation language of Z0351-02 that: “The conditional use is implemented when all necessary permits for Phase 1 have been secured and are maintained.” Ms. Kellington also points to the finding in Z0160-09 that Phase 1 and Phase 2 approved in Z0351-02 were completed. She points out that all major development permits for the new primary structure were obtained, associated parking lot and road improvements required by the CUP were completed and the church has

used the structure for the past two decades, and therefore the permit was “implemented” and remains in effect. Ms. Kellington further asserts that because Z0351-02 remains in effect it can be modified and therefore whether or not Z0160-09 has expired is irrelevant.

50. Ms. Kellington responds to the proposed conditions of approval submitted by Mr. Burgess, contending that at least two are inappropriate and the church opposes all three. She asserts that none have a rational nexus to any standard, lack proportionality to the impacts of the church’s proposal, and essentially contends they single out the church for disparate treatment. Ms. Kellington also reminds the hearings officer that the church owns the property and dwelling that lies between the commercial property owned by Mr. Fallow and Stafford Investments, LP and the church. Ms. Kellington points out that the dwelling on this property is the home of Pastor Huchette and the church in fact uses the ODOT service road that bisects the Stafford Investments, LP property to access the residence. Ms. Kellington proposes the following three conditions:
- Existing weekday events that are currently scheduled during the weekday school days and hours shall not occur during school days and hours.
 - The school shall not use the ODOT service road for the proposed school’s access.
 - The approved school is limited to 150 Kindergarten-5th grade students and 20 staff.

C. DISCUSSION

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. This application was originally processed as a Type II Permit, pursuant to Clackamas County Zoning and Development Ordinance (ZDO) Section 1307, approved by the Planning Director’s designee, Principal Planner Joy Fields, and this appeal followed. Table 1307-01 authorizes the hearings officer to hear appeals of planning director decisions. Pursuant to ORS 215.416(11)(a), an appeal of an administrative decision is reviewed as a *de novo* matter. The hearings officer is required to conduct an independent review of the record, is not bound by the prior decision of the planning director and does not defer to that decision in any way. The record of the initial proceedings shall, however, be made a part of the record of the appeal. New evidence may be introduced in an appeal, and new issues may be raised. The applicants must carry the burden of proof that the application complies with all applicable approval criteria in light of all relevant substantial evidence in the whole record, including any new evidence.

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Sections 202, 316, applicable portions of the 1000s (*Development Standards*), 1307 and 1309. The findings below identify the standards and criteria that are relevant to this decision, state the facts relied upon in rendering the decision, and explain the justification for the decision. ***These findings and conclusions were reviewed, modified, and/or adopted by the Hearings Officer, with additional discussion, comments, and changes denoted by boldface type in italics and/or in brackets. The Hearings Officer verified that the County provided the required notices for this hearing.***

Several issues raised by appellants and opponents are outside the scope of this hearing. For example, assertions that approval of the application may negatively impact property values are not an approval criteria or appropriate consideration. In addition, arguments that the Type II land use application procedure itself is inadequate because it provides for too small a notice area and too short a timeline for reviewing applications and submitting comments before a decision is made are related to advocating for a change to the Ordinance are legislative in nature and outside the scope of this hearing.

1. Background/Overview of Applicant's Proposal:

The site is located on the south side of SW Borland Rd, west of the Borland Road/Stafford Road intersection and north of the I-205 Freeway. The site is relatively flat with steeper slopes located around the regulated stream and habitat conservation area that crosses the southeast corner of tax lot 500 and 600. The existing development expansion from the early 2000s occurred with protections for the natural habitat and stream ecosystems.

The applicant originally proposed to use the existing structure and outside play areas to provide preschool and ultimately school services for up to 305 students and about 45 staff. After the traffic impact analysis, the applicant modified the proposal to use the existing structure and outside play areas for a K-5 parochial school with no additional daycare or preschool services. Future addition of daycare and preschool services will require additional land use review.

The subject property and existing development went through a Conditional Use application and approval in 2002 and 2009 to expand the church building and the use to their current intensity. File number Z0351-02 was the original approval by the Hearings Officer for the expansion of the church. Z0160-09 was for the re-approval of phase 3 and 4 of the church expansion. The applicant is proposing to modify both of those previous decisions to be able to use the existing classrooms, kitchen, gym, auditorium, rooms, and grounds for up to 150 children for Kindergarten through 5th grade as Phase I. Additional land use review would be required for serving additional children in Phase II. While the previous Conditional Use applications were accompanied by Design Review application Z0845-02, the applicant is not proposing any outside modifications to the structure, parking, or grounds and thus a separate Design Review is not required to use the existing site development for 150 K-5 parochial school uses. ***[The Hearings Officer finds the above background/overview description accurate and relevant and adopts it from the staff decision. The Hearings Officer further notes that the referenced Z0351-02 and Z0160-09 Final Orders also contain extensive discussion of the applicant's past efforts to utilize the existing ODOT service road as an additional access from SW Stafford Road across Athey Creek to the existing church campus. The church owns a contiguous property that is the location of Pastor Huchette's home. This contiguous property is accessed from SW Stafford Road via the ODOT service road. However, the ODOT service road does not provide vehicle access from SW Stafford Road through to the main church campus and the current application under review here does not propose such access.]***

2. **ZDO Section 316, Rural Residential Farm Forest 5-Acre (RRFF-5) District:**

Section 316 regulates the Rural Residential Farm and Forest 5-Acre (RRFF-5) district, which includes the subject property. Table 316-1 identifies Schools as a Conditional Use subject to Section 805. In Section 805, the only standard is that the minimum side setback for a school is 25 feet. This application is for a modification of a previously approved Conditional Use. An application for a modification of a previously approved Conditional Use approval, is subject to Section 1309 pursuant to ZDO 1307 Procedures.

[Staff Finding]: The proposed use is a modification of a previously approved Conditional Use in the RRFF-5 Zoning District. The setbacks for schools in ZDO 805 are met. However, as a modification of a prior land use decision, the application is being reviewed pursuant to ZDO Section 1309. **This criterion is met. [The Hearings Officer concurs with and adopts the above staff finding. Appellant Randy Yamada and the Stafford-Tualatin CPO assert that this approval requires a zoning change for the subject property and therefore should be denied. However, as correctly stated in the staff decision, Table 316-1 identifies Schools as a Conditional Use in the RRFF-5 zone, the current zoning for the property.]**

3. **ZDO Section 1309, Modification:**

1309.01 APPROVAL CRITERIA

A modification to an approved Type II or III land use permit, or conditions thereto, requires review as a Type II application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:

A. A modification shall be consistent with the prior approval;

[Staff Finding]: The applicant is proposing to modify the use of the church building approved for expansion through Conditional Use applications including Z0351-02 and Z0160-09. The proposed use of the existing church building and grounds for a school use is consistent with the prior approval because the footprint of the building and the amount of development on site will stay the same. While there will be more use of the building during the day Monday-Friday, the applicant indicates that in the early 2000s there was more use of the building and the addition of the school use will bring the total visitor number up to, or close to, what the site previously supported.

The Traffic Impact Statement (TIS) concludes that the transportation system is adequate to accommodate the proposed development, and it does not recommend any mitigation measures. Therefore, the traffic generated from a K-5 parochial school, using the existing driveways on SW Borland Rd is consistent with the prior land use approval.

Additionally, ZDO 202 defines Institutional Use as: "The use of land and/or structures for activities such as child care, adult daycare and pre-school facilities, public and private schools, colleges, universities, art, music, trade and other educational and

training facilities, convalescent care facilities, nursing homes, hospitals, places of worship, fraternal lodges, municipal and civic buildings, transit centers and park-and-ride facilities, parks, swimming pools and other recreational facilities open to the public or a membership group, senior and community centers, libraries, museums, cemeteries and mausoleums, utility facilities, and similar public and private uses". Therefore, places of worship and schools are both considered institutional use and thus the proposed modification of the site for institutional use during the day is consistent with prior approvals. **This criterion is met.**

[The Hearings Officer concurs with and adopts the above staff finding that this criterion is met. Appellants argue that the modification process used here is inconsistent with the prior approval of the Z01351-02 Final Order, contending that the order required submission of a new conditional use permit application. Appellant Rob Fallow and Stafford Investments, LP's attorney, Mr. Burgess, also submits arguments asserting that this criterion is not met essentially contending that the proposed "school" is not consistent with the approval obtained for a church. Mr. Burgess distinguishes between the current educational use of the site as accessory to the church use, and the proposed school use of the same facilities. Appellants also point to the County ZDO applying Section 12.804 to Places of Worship and applying Section 12.805 to Schools. It is important to note, however, that the full text and only standard in ZDO Section 12.805 states: "The minimum side setback for a school is 20 feet." This is the same setback standard for places of worship in ZDO Section 12.804. A determination concerning whether an application meets this standard requires no exercise of discretion or judgment.

Mr. Burgess points to the holding in Marks v. Land Conservation and Development Commission, 327 Or.App 708 (2023) concerning intergovernmental agreements affecting the Stafford Urban Reserve area also being land use decisions meeting the significant impacts test. Mr. Burgess contends that Marks requires that "land use applications within this Urban Reserve area must be scrutinized to an extent where there are findings showing the application is in harmony with the future urbanization of the area" further referring to Policy 4.E.1.5 of the Comprehensive Plan. While correct, and LUBA certainly has jurisdiction over an appeal of this decision, the issue here is whether the current application for modification of an existing CUP for property with existing development and use already approved pursuant to Type III procedure is consistent with the prior approval.

Ms. Kellington points to the correct standard articulated in Tolbert v. Clackamas County, 70 Or LUBA 388 (2014). In this case, LUBA determined that the use of the term "consistent" does not necessarily "require [an] exacting match between the prior proposal and the modified proposal." LUBA explains that "the ZDO's concern is more with changes that will increase building size, lot coverage, density, intensity and off-site impacts, not absolute consistency for absolute consistency's sake." Here, the applicant proposes no changes that will increase building size, lot coverage, or density. With respect to intensity and

off-site impacts, as pointed out by Ms. Kellington and the applicant, the church is essentially trading an approximately 750-person weekly use of the same existing classrooms in the existing structure of the proposed school K-5 school use for up to 150 students, or approximately the same intensity as the existing use. Further, I note that even with the proposed school use, the intensity of the use is significantly below the intensity of use for the site as proposed in the 2002 CUP application anticipating an increase of up to 10,000 people weekly, with the church having experienced a nearly 80% decrease in attendance. I understand that these numbers can again increase, but this is a comparison of the current and proposed intensity with the intensity approved in the CUP.

Similarly, off-site impacts were identified and evaluated in the 2002 and 2009 CUP applications. Here, County staff required the applicant to conduct a current traffic impact analysis focused on SW Borland Road, where the access to the site is located. Ms. Cross and Ms. Danziger of Lancaster Mobley consulted with County engineering staff in developing the scope of the study. They revisited the study after the hearing to ensure their analysis of the area traffic included data from a school that was not in session when their initial data was collected. Ms. Cross and Ms. Danziger reported that the traffic study results show peak hour traffic is now less than shown in the 2009 traffic study conducted for the prior application. Further, Ms. Cross and Ms. Danziger report that the SW Borland Road access is adequate for the proposed use and traffic queueing related to the proposal will be accommodated on site. They did not recommend any mitigation related to this proposal. In other words, the impact to traffic and the relevant roadway infrastructure is consistent with the existing impact of the church. Similarly, I find no reason to suspect that noise associated with the proposed school use will be any more impactful to area properties and uses than the current place of worship use, noting that the nearest residential properties are located to the back of the church property adjacent to a large parking lot and an internal road for vehicular maneuvering through the church campus.

I find that the proposed school use is “similar” to the church’s “places of worship use” as both are “institutional uses” as defined by the ZDO. I find no reason to infer any difference impacts of the proposed school use as compared to the impacts of the church use. Thus, the proposed modification of the site for institutional use during the day is consistent with prior approvals.

B. A modification shall be consistent with all Ordinance provisions in effect on the date the modification request is submitted; and

[Staff Finding]: In addition to Section 1309 of the Zoning and Development Ordinance (ZDO), this application involves the modification to an institutional use and site improvements that have to meet the Development Standards in ZDO Sections 1002, 1003, 1004, 1005, 1006, 1007, 1009, 1010, 1011, 1015, and 1021, according to Table 1001-1 that identifies the applicable sections for different uses. The applicant addresses these sections in the application materials and staff will consider each

section below: ***[The Hearings Officer concurs in the above analysis, likewise addressing each applicable section below.]***

1002 PROTECTION OF NATURAL FEATURES-

[Staff Finding]: The applicant provided narrative and a site plan that identifies that there is no expansion of the building and no additional impervious surface proposed. Therefore, there is no impact to natural features proposed. The applicant indicated this section was not applicable. Staff have reviewed the natural features on the site and find that there is no impact to natural features from the use of existing developed structures, playgrounds, drive aisles and parking. **These criterion are met. [The Hearings Officer notes that the applicant proposes no new development of the site, with no proposed expansion of the building or areas of impervious surfaces. Rather, the applicant seeks to use existing developed structures, playgrounds, drive aisles, and parking facilities approved through prior applications. I found the applicant's assertions that the intensity of use associated with this proposal will remain consistent with prior land use approvals credible. The Hearings Officer finds no impact to natural features associated with this proposal. These criteria are met.]**

1003 HAZARDS TO SAFETY –

[Staff Finding]: The subject properties does contain a very small area of mapped mass movement hazards on the southeastern corner approximately 450 feet from the existing parking areas. However, as the applicant indicated in the narrative, there is no expansion of the building and no site development proposed. Therefore, there would be no impact to these mapped landslide mass movement hazards. There are no steep slopes, or hydrologic hazards that would impact the proposed development. The applicant indicated this section was not applicable and staff concur. **These criterion are met. [The Hearings Officer notes that the applicant proposes no new development of the site. Rather, the applicant proposes to use existing developed structures, playgrounds, drive aisles, and parking facilities approved through prior applications. These criteria are not applicable.]**

1004 HISTORIC PROTECTION –

[Staff Finding]: The subject property has no known historic resources or historic landmarks on site. Therefore, the proposed modification of the use in the existing development, does not impact any known historic resources. **These criterion are met. [The Hearings Officer finds no known historic resources or historic landmarks on site. These criteria are not applicable.]**

1005 SITE AND BUILDING DESIGN ***[Staff Finding]:*** There are no exterior changes proposed for the existing building. Additionally, the proposed development involves no site development. **Therefore, the sections of 1005 are not applicable. [The Hearings Officer notes the applicant proposes no exterior changes for the existing building and no new site development. These criteria are not applicable.]**

1006 Utilities, Street Lights, Water Supply, Sewage Disposal, Surface Water Management, And Erosion Control –

[Staff Finding]: The subject property is not inside the Portland Urban Growth Boundary and the proposed development is for changing the use of the existing

improvements. Therefore, the Sections of 1006 that apply only to properties inside the UGB, Water Supply, and Sewage Disposal are not applicable to this application. No public water usage is proposed. The applicant provided documentation that they have the capacity to use water for the proposed use and must stay within the limits set under ORS 537.545. Since there is no ground work or additional impervious surface, the Surface Water Management and Erosion Control sections of the ZDO are not applicable.

The applicant provided a preliminary statement of feasibility from the Oregon Water Resources Department as part of their application submission. **These criterion are met. [The Hearings Officer notes that the site is not within the Portland Metropolitan Urban Growth Boundary. Therefore, sections that apply only to properties inside the UGB are not applicable. The site is already developed consistently with prior land use approvals and is served by existing utilities, street lights, water supply, sewage disposal, surface water management, and erosion control facilities approved through prior land use applications. I found the applicant's assertions that the intensity of use associated with this proposal will remain consistent with prior land use approvals credible. This finding is also consistent with the preliminary statement of feasibility provided by the Oregon Water Resources Department. These criteria are met.]**

1007 Roads and Connectivity.

1007.01 GENERAL PROVISIONS

A. *The location, alignment, design, grade, width, and capacity of all roads shall be planned, coordinated, and controlled by the Department of Transportation and Development and shall conform to Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards. Where conflicts occur between Section 1007, the Comprehensive Plan, and the Clackamas County Roadway Standards, the Comprehensive Plan shall control.*

D. *Street alignments, intersections, and centerline deflection angles shall be designed according to the standards set forth in Chapters 5 and 10 of the Comprehensive Plan and the Clackamas County Roadway Standards.*

[Staff Finding]: The subject site is zoned RRFF-5 and is located outside of the UGB. The proposal is for a new use but no new site development. Therefore, new roads and driveways are not proposed or considered in this decision. In the development proposal, there are no modifications to approaches to public and county roads. The applicant also proposed to use the existing driveways onto SW Borland and those were used in traffic impact study by Lancaster Mobley that found:

“The impacts of the proposed K-5 school, located at the existing Rolling Hills Community Church facility, to the existing transportation system within the site vicinity are expected to be minimal.”

“The new site trips are not expected to significantly alter the operation or safety of the existing transportation facilities.”

Additionally no change is proposed for the location, alignment, design, grade, width, or capacity of adjacent roads. Based on the traffic analysis and the proposal to use the existing parking and access drives **these criterion are met.** *[The Hearings Officer concurs with the above findings. I note also that the traffic impact study by Lancaster Mobley compared the operation of the existing transportation system within the site vicinity, together with projected impacts of the proposed school use, finding the traffic will remain less than the traffic impact projected by previous similar studies for the applicant's 2002 and 2009 land use applications. In particular, the Z0351-02 CUP approved April 9, 2023 on reconsideration anticipated growth to 10,000 congregants, with the church providing significant mitigation for traffic growth that has not materialized.]*

E. All roads shall be designed and constructed to adequately and safely accommodate vehicles, pedestrians, and bicycles according to Chapters 5 and 10 of the Comprehensive Plan and the Clackamas County Roadway Standards. Development-related roadway adequacy and safety impacts to roadways shall be evaluated pursuant to the Clackamas County Roadway Standards and also to Oregon Department of Transportation standards for state highways.

F. Roadways shall be designed to accommodate transit services where transit service is existing or planned and to provide for the separation of motor vehicles, bicycle, and pedestrian traffic, and other modes as appropriate.

G. The needs of all modes of transportation shall be balanced to provide for safe and efficient flow of traffic. Where practical, pedestrian crossing lengths shall be minimized and the road system shall be designed to provide frequent pedestrian connections.

[Staff Finding: There are no new roads proposed with this modification of existing development and the use is existing. Therefore these criterion are not applicable and are included here for informational purposes only. *[The Hearings Officer concurs, noting again that this application proposes a modification to existing approved uses of the site utilizing the existing approved infrastructure, anticipating no increase in the intensity of use reviewed and approved in the underlying conditional use permits. Therefore, these criteria are not applicable.]*

1007.02 PUBLIC AND PRIVATE ROADWAYS

A. All roadways shall be developed according to the classifications, guidelines, tables, figures, and maps in Chapters 5 and 10 of the Comprehensive Plan and the provisions of the Clackamas County Roadway Standards.

B. The layout of new public and county roads shall provide for the continuation of roads within and between the development and adjoining developments when deemed necessary and feasible by the Department of Transportation and Development.

C. New county and public roads terminating in cul-de-sacs or other dead-end turnarounds are prohibited except where natural features (such as topography, streams, or wetlands), parks, dedicated open space, or existing development preclude road connections to adjacent properties, existing street stubs, or existing roads.

[Finding: There are no new roads proposed with this modification. The previous land use reviews and decisions addressed frontage improvements, right of way dedication,

and access drive. Transportation and Engineering Program staff indicated that a Traffic Impact Analysis was needed, but did not suggest other improvements would be required. **Therefore, these criterion are not applicable and are included here for informational purposes only. [The Hearings Officer concurs that these criteria are not applicable.]**

D. *Developments shall comply with the intersection sight distance and roadside clear zone standards of the Clackamas County Roadway Standards. In addition: 1. No planting, signing, or fencing shall be permitted which restricts motorists' vision; and 2. Curbside parking may be restricted along streets with visibility problems for motorists, pedestrians, and/or bicyclists as deemed appropriate by the Department of Transportation and Development.*

Finding: The transportation impact study used the existing driveways that access SW Borland Rd and found no issues with queuing, turning, or capacity that warranted mitigation. **This criteria is met. [The Hearings Officer concurs that these criteria are met. The applicant's transportation impact study, stamped by a qualified professional engineer, is substantial and credible evidence that the existing development the applicant proposes to use meets these standards and no mitigation is warranted.]**

E. *New developments, subdivisions, and partitions may be required to dedicate land for right-of-way purposes and/or make road frontage improvements to existing rights-of-way, consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.*

F. *Road frontage improvements within the UGB and in Mt. Hood urban villages shall include*

Finding: The proposal is a modification of the use to include up to 150 students and to provide school services at an existing church facility. The subject site is outside of the UGB and not in the Mt Hood urban villages. **Therefore these criterion are not applicable and are included here for informational purposes only. [The Hearings Officer concurs.]**

1007.03 PRIVATE ROADS AND ACCESS DRIVES A. *Private roads and access drives shall be developed according to classifications and guidelines listed in Section 1007, Comprehensive Plan Figures 5-1 through 5-3, Typical Roadway Cross Sections, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards, except....*

Finding: Neither of the adjacent roads are designated as scenic roads on Comprehensive Plan Map 5-1. The subject site is outside of the urban area and the area (known as Stafford/Tualatin Valley) is not identified in a Community or Design Plan in Chapter 10 of the Comprehensive Plan so there are no specific design standards for the road frontages. There are no new roads proposed with this modification of existing development and the institutional use is existing. **Therefore these criterion are not applicable and are included here for informational purposes only. [The Hearings Officer concurs.]**

1007.04 PEDESTRIAN AND BICYCLE FACILITIES – **Finding:** There are no trails, sidewalks or access ways proposed in the modification of the site. Borland Road is identified as a planned bicycle route on Map -2a of the Comprehensive Plan. Additional right of way was granted by the subject property owner when the church facilities were expanded through the 2002 Conditional Use approval. 2024 aerial

images confirm that the frontage at the subject site includes wide shoulders that could be used by bicycles and a complete sidewalk along the road frontage of the subject site. Since there will be no change or reconstruction of the roadway and since the existing institutional building is not being expanded, there is no requirement to build pedestrian or bicycle facilities pursuant to ZDO 1007.04 (C). Since there is no reconstruction or new construction of any street, the future planned bicycle route identified in the Comprehensive Plan are not applicable per 1007.04 (K). **Therefore these criterion are not applicable and are included here for informational purposes only. [The Hearings Officer concurs.]**

1007.05 TRANSIT AMENITIES – Finding: The subject site is served by Tri-met bus route 76 according to the Tri-met system map. Images captured by Google in 2024 show an existing bus stop at the subject site. There are no changes to the roads, road cross sections, road frontages, or site development. **Therefore these criterion are not applicable and are included here for informational purposes only. [The Hearings Officer concurs.]**

1007.06 STREET TREES and 1007.07 TRANSPORTATION FACILITIES CONCURRENCY -Finding: 1007.06 does not apply to the RRFF-5 land outside of the UGB. The proposed development is a modification of an existing developed site and 1007.07 does not apply. **These criterion are met. [The Hearings Officer concurs.]**

1009 Landscaping. Finding: The applicant is proposing no additional landscaping. Table 1009-1 identifies that in the RRFF-5 Zoning District 25 percent of the site is to be landscaped for conditional uses with up to 15 percent of the minimum landscaped requirement allowed to be developed with pedestrian amenities that have an impervious surface. The applicant indicated no change would be made to the impervious area that consists of structures, parking lots, and drive aisles. Measuring the amount of vegetated land on the subject site indicates that there is about 522,027 square feet of open play fields, soccer fields, trees and other vegetation. Additional landscaping exists in the parking lot, around the church building, and adjacent to the sidewalk. The subject site consists of approximately 1,404,224 square feet. Thus the applicants are proposing to maintain more than 25% landscaping coverage. This criterion is met. Additional applicable criterion as identified in the ZDO are included in excerpts and findings below: extension **[The Hearings Officer concurs.]**

1009.04 SCREENING AND BUFFERING A. Screening shall be used to eliminate or reduce the visual impacts of the following:

4. Parking lots within or adjacent to an Urban Low Density Residential, VR-5/7, VR-4/5, RA-1, RA-2, RR, RRFF-5, FF-10, FU-10, or HR District;

Finding: The applicant is proposing to keep existing trees and landscaping that along the east and west of the parking lot. The natural areas with dense trees along the eastern portion of the property are also to remain. Therefore, the trees along the property boundaries that are adjacent to RRFF-5 zoned property will provide a screening and buffering element to reduce the visual impacts from adjacent neighbors. **These criterion is met. [The Hearings Officer concurs.]**

1010 SIGNS. Finding: No sign designs were included in the application materials and no signs were proposed as part of this application. **Therefore, this is informational only and does not apply. [The Hearings Officer concurs.]**

1015 PARKING AND LOADING.

1015.02 MOTOR VEHICLE PARKING AREA STANDARDS

A. Off-street parking areas shall be designed to meet the following requirements:

1. Off-street motor vehicle parking areas shall be provided in defined areas of the subject property. No area shall be considered a parking space unless it can be shown that the area is accessible and usable for that purpose and has required maneuvering area for vehicles. Required backing and maneuvering areas shall be located entirely onsite.
2. Automobile parking spaces shall be a minimum of 8.5 feet wide and 16 feet long, except that parallel spaces shall be a minimum of 8.5 feet wide and 22 feet long.
3. A minimum of 25 percent of required parking spaces shall be no larger than 8.5 feet wide and 16 feet long.
4. Parking areas shall comply with minimum dimensions for curb length, stall depth, and aisle width established by the Clackamas County Roadway Standards; these dimensions are based on the orientation (e.g., 45-degree, 90-degree), length, and width of the spaces.
5. Double-loaded, 90-degree angle parking bays shall be utilized where possible.
6. A minimum of one parking space or five percent of the required spaces, whichever is greater, shall be marked and signed for use as carpool/vanpool spaces. These spaces shall be the closest employee automobile parking spaces to the building entrances normally used by employees, but shall not take priority over any spaces required for individuals with disabilities.
7. In parking lots greater than one acre, major onsite circulation drive aisles and lanes crossing to adjacent developments shall not have parking spaces accessing directly onto them.
8. Where feasible, shared driveway entrances, shared parking and maneuvering areas, and interior driveways between adjacent parking lots shall be required.
9. Except for parallel spaces, parking spaces heading into landscaped areas or along the perimeter of a parking lot shall be provided with a sturdy tire stop at least four inches high and located two feet within the space to prevent any portion of a car within the lot from extending over the property line.

Finding: The applicant is proposing to keep existing parking spaces no expansion is proposed. Z0160-09 had a condition of approval for the County Engineering Division to review and approve the construction plans prior to construction of the additional parking. Therefore, the existing parking has previously been reviewed and approved by the Transportation and Engineering Staff. **These criterion are met. [The Hearings Officer concurs.]**

B. Parking Minimums: The minimum number of parking spaces listed in Tables 1015-1, Automobile Parking Space Requirements, and 1015-2, Minimum Automobile Parking Space Requirements for Dwellings, applies unless modified in Subsection 1015.02(D).

Table 1015-1 - Land Use Category: Schools: Elementary and Junior High Schools (per school)

Minimum Parking Spaces: 15, or 2 per classroom, whichever is less

C. Parking Maximums – N/A

D. Exceptions to Parking Requirements – N/A

Finding: The applicant is proposing to keep the existing parking spaces that include over 100 parking spaces. The proposal includes using 16 rooms for the K-5 school

use. This is a modification of previous land use decisions for a Conditional Uses and Design Review. Thus, the proposal exceeds the 15 spaces that are required. The subject site is outside of the UGB and the building is not being expanded so there are no parking maximums. No exceptions to the parking requirements are needed, or proposed. **These criterion are met. [The Hearings Officer concurs.]**

1015.03 BICYCLE PARKING STANDARDS

Table 1015-3 - Land Use Category: Schools: Elementary and Junior High Schools (per classroom)

Minimum Bicycle Parking Spaces: 2 per classroom, with a maximum of 100. Minimums outside the UGB are 20 percent of the requirement listed in Table 1015-3.

Finding: The subject property is outside the UGB and the applicant proposes to use 16 rooms as school classrooms. Therefore, 20% of 32 is 6.4 bicycle parking spots. **As conditioned this criterion are met. [The Hearings Officer concurs, adopting the related proposed condition.]**

1021 SOLID WASTE AND RECYCLABLE MATERIAL COLLECTION

Finding: The applicant proposes no changes to the location or access for the solid waste collection area. **[The Hearings Officer concurs.]**

C. A modification shall not result in any of the following:

1. *A change in the type of use (e.g. commercial, industrial, institutional);*

Finding: The applicant verified that there is no change in use and even with the addition of parochial school uses since both schools and places of worship are types of Institutional uses pursuant to the definition in ZDO 202. The use of the subject property will continue to be institutional, as approved in prior land use decisions. **This criterion is met. [The Hearings Officer concurs, referencing the earlier discussion on this topic that both schools and places of worship are institutional uses and therefore the use will remain an institutional use.]**

2. *An increase of greater than 25 percent of the original approved building floor area;*

Finding: The applicant stated that the proposed modification of the use involves no change, or increase, in building floor area. **This criterion is met. [The Hearings Officer concurs.]**

3. *An increase of greater than 25 percent of the original approved lot coverage;*

Finding: The proposal includes no new structures and no new site development. Therefore, no increase in lot coverage is proposed. **This criterion is met. [The Hearings Officer concurs.]**

4. *An increase in the density of development (residential or recreational uses), or intensity of use, as demonstrated by a change in occupancy rating requiring substantial modifications to structures;*

Finding: Staff verified with Building Code personnel that the proposed addition of educational use to the existing church would change the occupancy rating for a portion of the structure used by more than 6 school students. However, no structural changes are anticipated since places for Assembly such as the church and places for Education are both considered Commercial uses by the Oregon Structural Specialty Code. Therefore, the proposed use that results in a modification of previous land use decisions will not increase the density or intensity of the use, and the change of the occupancy rating will not require substantial modifications to the structure. **This criterion is met. [The Hearings Officer concurs.]**

5. *An increase in traffic congestion or use of public facilities;*

Finding: The applicant provided a traffic impact study conducted by Lancaster Mobley for 150 students for a K-5 school. A review by the Transportation and Engineering Program staff found no objections to the analysis or findings. The study found no significant impact to the transportation system including traffic congestion. This criterion is met. ***[The Hearings Officer concurs, referencing earlier discussion of the traffic impact study and related findings.]***

6. A reduction in approved open space;

Finding: The proposed school use will utilize the existing open space for the school children. Review of the previous land use decisions by staff confirm that no required or approved open space is modified by the addition of a parochial school to serve 150 K-5 students. **This criterion is met. *[The Hearings Officer concurs.]***

7. A reduction of off-street parking spaces or loading berths, except as provided under Section 1015; or

Finding: The application materials show no change to the parking spaces or loading berths. **This criterion is met. *[The Hearings Officer concurs.]***

8. A reduction in required pavement widths or a change in major access locations, except as required by the County.

Finding: The application materials show that the proposed additional use does not include any changes to road pavement widths at road access locations. Road access to SW Borland is not changing and that is the proposed access for the students, teachers, and parents. There no increase in pavement for parking spaces proposed. **This criterion is met. *[The Hearings Officer concurs.]***

D. DECISION

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer APPROVES application Z0436-23 to modify Conditional Use applications Z0160-09 and Z0351-02 to use a portion of an existing building for parochial school uses, subject to the following conditions of approval:

E. CONDITIONS OF APPROVAL

The Clackamas County Land Use and Zoning staff recommended approval of this application subject to the several conditions consistent with the original December 9, 2024 decision in Z0436-23 approving this application. The applicant and the appellants also recommended several conditions of approval. The Hearings Officer reviewed the proposed conditions of approval, findings, and discussion in this matter and adopted, and/or modified as denoted by boldface type in italics, the following conditions of approval:

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parentheses.

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on November 7, 2023 and additional documents submitted on May 1, 2024, May 14, 2024 and November 20, 2024, ***and subsequent additional***

Exhibits submitted by the applicant through the date the record closed in this matter. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with these documents and the limitation of any approval resulting from the decision described herein.

2. The proposed parochial school use and must stay within the water usage limits set under ORS 537.545.b.
3. The proposed school use will be limited to using the existing access drives connected to SW Borland Rd. ZDO 1007.01 and 1309.01. **The school shall not use the ODOT service road for the proposed school's access. Direct non-emergency vehicular access to Stafford Road is prohibited. Pedestrian and emergency access to Stafford Road is allowed if allowed by ODOT or court order and required permits.**
4. Provide a site plan and/or pictures documenting that there are at least 6.4 bicycle parking spaces available on site for the school use. ZDO 1015.03.7
5. **Existing weekday events that are currently scheduled during the weekday school days and hours shall not occur during school days and hours. ZDO 1309.01.A, B and C.**
6. **The approved school is limited to 150 Kindergarten-5th grade students and 20 staff. ZDO 1309.01.A, B and C.**

Dated: February 25, 2025



Carl D. Cox
Clackamas County Hearings Officer

ADVISORY NOTES

Advisory notes are not a part of the decision on this land use permit. The items listed below are not conditions of land use approval and are not subject to appeal. They are advisory and informational only but may represent requirements of other agencies/departments. As such, they may be required by these other agencies/departments in order to complete your proposed development.

1. Clackamas County Building Codes Program has reviewed the proposal and has provided the following advisory notes.
 - a. A change of use permit will be needed.
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APPEAL RIGHTS

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision is "final" for purposes of a LUBA appeal as of the date of the decision appearing by my signature.