ORDINANCE NO. 2379

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, ADOPTING THE HEARING EXAMINER'S RECOMMENDATION TO APPROVE WITH CONDITIONS THE SYLVAN LEARNING CENTER CONDITIONAL USE PERMIT (FILE L060486), AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Mr. Reed Atkin (dba BGA Education, Inc.), herein referred to as applicant, submitted a Conditional Use Permit application to change the use within an existing building from office to a learning center with classrooms, computer labs, and administrative support areas at 18378 Redmond-Fall City Road; and

WHEREAS, a Conditional Use Permit is a Type IV permit decision; and
WHEREAS, the Redmond Community Development Guide authorizes the
Hearing Examiner to conduct an open record hearing for the Conditional Use Permit and
make a recommendation with findings of fact, conclusions of law, and conditions of
approval for the Conditional Use Permit to the City Council for consideration; and

WHEREAS, on October 15, 2007, the Hearing Examiner conducted an open record hearing to receive and review the application record and to hear verbal testimony relative to the Sylvan Learning Center Conditional Use Permit (File L060486); and

WHEREAS, the Hearing Examiner recommended approval of the Sylvan Learning Center Conditional Use Permit (File L060486) subject to conditions; NOW, THEREFORE.

THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings, Conclusions, and Conditions of Approval. After carefully reviewing the record and considering the evidence and arguments in the record and in the Hearing Examiner's recommendation, the City Council hereby adopts the findings, analysis, and conclusions in the Hearing Examiner's recommendation for the Sylvan Learning Center Conditional Use Permit.

Section 2. Approval. The City Council hereby approves the Sylvan Learning Center Conditional Use Permit, subject to the conditions of approval identified in the Hearing Examiner's recommendation.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 4. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City's legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

OF REDMOND

ROSEMARIE IVES MAYOR

ATTEST/AUTHENTICATED:

LISA FILES, CITY CLERK

APPROVED AS TO FORM:

OFFICE OF/THE CITY ATTORNEY:

FILED WITH THE CITY CLERK! PASSED BY THE CITY COUNCIL:

SIGNED BY THE MAYOR: PUBLISHED:

EFFECTIVE DATE:

ORDINANCE NO.: 2379

November 29, 2007 December 4, 2007 December 6, 2007

December 10, 2007 December 15, 2007

Sylvan Learning Center CUP L060486 October 22, 2007 Page 1 of 14

Sylvan Learning Center CUP L060486 October 22, 2007 Page 2 of 14

ISSUES

Does the application meet the criteria for CUP approval as established within the RCDG? Does

sufficient parking exist within the Eastlake Business Park to accommodate the proposed Sylvan

1 2

3

Learning Center? Will the Sylvan Learning Center conflict with existing tenancies within the Eastlake Business Park?

7 8

9

10 11

12 13

14

15 16

17 18

19

20

21 22

23 24

25

26 27

28

29 30 Eastlake Business Park?

FINDINGS OF FACT

- 1. Atkin desires to open a Sylvan Learning Center in approximately 2,500 square feet (SF) of leased space within Building A in the Eastlake Business Park. (Exhibit 4 et al.) Atkin presently operates Sylvan Learning Centers in Bellevue (Factoria), Sammamish, and Renton Highlands. Atkin's Bellevue Center was in the top 5% and his Sammamish Center was in the top 15% of Sylvan Learning Centers in the United States and Canada in 2006 measured by gross revenue. Atkin has developed the specifics of the proposed facility in Redmond based upon his actual experience with his three other operations. (Atkin testimony)
- 2. The Eastlake Business Park is an approximate three to four acre site located between Redmond-Fall City Road and 185th Avenue NE. ³ (Exhibits 1.1 and 2 {Slide 2}) The site slopes downward from its 185th Avenue NE frontage to its Redmond-Fall City Road frontage. The site has been terraced. The site contains five buildings: Buildings B E are each one story; Building A is essentially a "daylight basement" style building, one story high when viewed from the north and two stories high when viewed from the south. ⁴ The five buildings collectively provide approximately 59,200 SF of gross floor area of which approximately 28,000 SF is contained within Building A. Since Building A is two stories, each level contains approximately 14,000 SF of gross floor area. (Exhibits 2 4)

The Business Park has two vehicular accesses, one on each of its public street frontages. The upper floor of Building A is most easily and directly accessed from the site's 185th Avenue NE driveway which leads to 54 parking stalls on the upper terrace north of Building A. The driveway continues around the west end of Building A to provide access to 14 more parking spaces opposite the lower level of Building A and then on to service the remaining buildings. The site contains a total of 152 parking spaces. (Exhibits 2 – 4)

For the sake of simplicity, Building A's long axis will be presumed to run east-west so that its long sides will be the north and south sides.

The labeling on Exhibit 1.1 suggests that 185th Avenue NE wraps around two sides of the Eastlake Business Park. That suggestion is incorrect: Only the relatively short northeast property line abuts 185th Avenue NE; a triangular parcel bordered by 185th Avenue NE on the north and Redmond-Fall City Road on the south abuts the east edge of the site. (Testimony)

Eastlake Business Park presently has a wide variety of tenants including a jewelry distributor, lighting manufacturer, silk screening, contractors' offices, a custom embroidery business, a travel agency, and various office occupancies. (Exhibit 2, Slide 5)

3. Eastlake Business Park is zoned Business Park (BP). (Exhibit 1, p. 4) Schools with a capacity of up to 150 full time equivalent students are a listed Conditional Use in the BP zone. [RCDG 20C.60.20-030, Permitted Land Use Chart, Services section]

Chapter 20D.130 RCDG, Parking Standards, contains the City's requirements for on-site parking. Table 20D.130.10-020(2) RCDG generally requires not less than 2.0 and not more than 3.0 parking spaces per 1,000 SF gross floor area in BP zones. Table 20D.130.10-020(1) RCDG provides that on-site parking for schools and certain other listed uses "must be adequate to accommodate the peak shift as determined by the Code Administrator after considering the probable number of employees, etc."

- 4. Atkin proposes to lease approximately 2,500 SF near the center of the upper floor of Building A. ⁵ (Exhibit 3 and Atkin testimony) Rosen Harbottle, the owner of Eastlake Business Park, has committed to provide "11 parking spaces in close proximity to the space [Atkin] will be leasing." (Exhibit 5)
- 5. Atkin plans to make interior tenant improvements to the leased space to create two staff offices, one testing room, and one "bull pen" room. The testing room will contain one or two tables each seating four persons maximum (one teacher and up to three students); the "bull pen" room will contain 10 similar tables. Atkin has similar arrangements at his other Sylvan learning Centers and has never had all the tables occupied at any one time. (Atkin testimony)
- 6. The area to be leased has historically been used as an office. Office use of that space would generate approximately 78 vehicle trips on an average day (ADT). The proposed Sylvan Learning Center is projected to generate 172 ADT, for a net increase in traffic of 94 ADT. (Exhibit 1.5, unnumbered p. 2)

Temporal distribution of Sylvan Learning Center traffic during the day is atypical of most office uses: It has no morning peak traffic hour trips and its afternoon peak hour will fall after the peak hour of the street system. The facility generally opens at 10:00 am, individual one-on-one student assessments and parent conferences begin at 11:00 a.m., and instructional sessions begin at 2:00 p.m. and end at 8:00 p.m. Instructional sessions last one hour; maximum anticipated class size is nine. Based on that distribution of activity, the maximum predicted parking demand will be 10 spaces. The site had 80 empty parking spaces on a typical business day. (Exhibit 1.5 and Atkin testimony)

Atkin initially contemplated leasing approximately 2,500 SF in the northeast corner of the upper floor of Building A. That concept was depicted on the site plan submitted with the application. (See Exhibits 1.1 and 2 {Slide 3}) Atkin has recently shifted the area to be leased to the west within Building A. (Atkin testimony)

- 8. As previously stated, Eastlake Business Park has a total of 152 on-site parking spaces. Of those, 54 are on the upper terrace north of Building A. If the upper floor of Building A were treated separately, its approximate 14,000 SF would require not less than 28 parking spaces; the entirety of Building A would require not less than 56 parking spaces. Eastlake Business Park has 54 spaces located near and with easy access to the upper level of Building A and an additional 14 located with easy access to the lower level. There are, thus, 68 parking spaces directly and proximately associated with Building A. (Exhibit 3)
 - 9. The proposed CUP is categorically exempt from the State Environmental Policy Act (SEPA) threshold determination process pursuant to WAC 197-11-800(2)(e). (Exhibit 1.3)
 - 10. Division 20C.70.45 RCDG, establishes specific neighborhood regulations for the Southeast Redmond Neighborhood. No specific requirements in the Southeast Redmond Neighborhood Plan apply to this project. (Exhibit 1, p. 5)
 - 11. Chapter 20D.140 RCDG, Critical Areas, contains standards, guidelines, criteria, and requirements intended to identify, analyze, preserve, and mitigate potential impacts to the City's critical areas and, where possible, to enhance and restore degraded resources such as wetlands, riparian stream corridors, or habitat. Certain aquifer recharge areas are regulated as critical areas. [Division 20D.140.50 RCDG] Eastlake Business Park is located within Wellhead Protection Zones 3 and 4. Sylvan Learning Center is proposing to locate in an existing building with only internal tenant improvements (except for an external business identification sign). No special critical areas conditions are thus warranted. (Exhibit 1, p. 5)
 - 12. Atkin submitted an analysis of compliance with CUP approval criteria. (Exhibit 6) The Technical Committee Report also includes an analysis of compliance with CUP approval criteria. (Exhibit 1, pp. 5 8) Both conclude that the proposal complies with applicable review criteria.
 - 13. The Technical Committee recommends approval subject to conditions related to trip generation and parking demand. (Exhibit 1) At the request of the Examiner *Pro Tem*, the Technical Committee clarified its recommendation: Exhibit 1, § VI, Conclusions and Recommendation, contains the only recommended conditions; Exhibit 1, § VII, Recommended Conditions of Approval, does not contain any recommended conditions of approval, its section heading notwithstanding; Exhibit 1, § VI, Recommended Condition (A)(a) is not intended to be literally applied or enforced on an hour-by-hour basis (although Exhibit 1.5, the document referenced in the recommended condition, includes an hour-by-hour trip generation estimate). The Technical Committee's intent is to limit the operation to the range and general characteristics presented in Exhibit 1.5. (Jeelani and Black testimony)

2

8

9

10

11

12

13

14

1.5

16

17

18

19

20

21

22 23

24

25

26

27

28

29

30

14. Two persons submitted correspondence in opposition to the Atkin proposal: Patrick Lofy (Lofy), a Kirkland resident who operates a Sylvan Learning Center franchise in Kirkland, and Sally Wallace (Wallace), an eight-year tenant in Eastlake Business Park who operates the embroidery business. ⁶ (Exhibit 1.6 and Atkin testimony)

Lofy suggests that the location is unsafe for students due to the range of other tenants and poor parking lot lighting. He also suggests that the facility "could bring 30-40 students into the business park each hour." At such levels, he believes that inadequate parking will exist. He argues that Eastlake Business Park "is an inappropriate location for an education facility such as this Sylvan Learning Center." (Exhibit 1.6)

Wallace argues that the access from Redmond-Fall City Road is steep and hazardous, and that having students in the business park would be incompatible with large trucks which maneuver within the business park. (Exhibit 1.6)

15. Any Conclusion deemed to be a Finding of Fact is hereby adopted as such.

PRINCIPLES OF LAW 7

Authority

A CUP is a Type IV application which is subject to an open record hearing before the Examiner. [RCDG 20F.30.15-040 and 20F.40.40-030] The Examiner makes a recommendation on the application which is subject to the right of reconsideration and then final action by the Council. [RCDG 20F.30.15-060 and 20F.30.45-100]

The Hearing Examiner shall make a written recommendation to approve a project or approve with modifications if the applicant has demonstrated that the proposal complies with applicable decision criteria of the Redmond Community Development Guide. ... In all other cases, the Hearing Examiner shall make a recommendation to deny the application.

[RCDG 20F.30.45-100]

The Technical Committee Report indicates that three citizens submitted comments. (Exhibit 1, p. 4, § III) There is no third commenter. Wallace sent her E-mail to Jeelani and sent copies to three other persons. (Exhibit 1.6) Persons receiving copies of a submittal are not commenters and, unless they individually submit a comment of their own, cannot be presumed to either agree with or disagree with the sentiments expressed in the E-mail sent to them.

Any statement within this section deemed to be a Finding of Fact or Conclusion is hereby adopted as such.

30

Review Criteria

The review criteria for CUP applications are stated at RCDG 20F.40.40-040:

- (1) The conditional use is consistent with the Redmond Community
 Development Guide, which includes the Comprehensive Plan;
- (2) The conditional use is designed in a manner which is compatible with and responds to the existing or intended character, appearance, quality or development, and physical characteristics of the subject property and immediate vicinity;
- (3) The location, size and height of buildings, structures, walls and fences, and screening vegetation for the conditional use shall not hinder neighborhood circulation or discourage the permitted development or use of neighboring properties;
- (4) The type of use, hours of operation, and appropriateness of the use in relation to adjacent uses shall be examined to determine if there are unusual hazards or characteristics of the use that would have adverse impacts;
- (5) Requested modifications to standards are limited to those which will mitigate impacts in a manner equal to or greater than the standards of this title;
- (6) The conditional use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood;
- (7) conditional use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or

conditions can be established to mitigate adverse impacts on such facilities;

(8) If applicable, the application must also conform to the standards established in Chapter 20D.170 RCDG, Special Uses.

A "consistency determination" is also required.

Consistency. Site plans are reviewed by the City to determine consistency between the proposed project and the applicable regulations and Comprehensive Plan provisions.

- (a) A proposed project's consistency with the City's development regulations shall be determined by consideration of:
 - (i) The type of land use;
 - (ii) The level of development, such as units per acre or other measures of density;
 - (iii) Availability of infrastructure, including public facilities and services needed to serve the development; and
 - (iv) The character of the development, such as development standards.
 Upon review of a site plan, the decision maker shall determine whether
- (b) Upon review of a site plan, the decision maker shall determine whether building design and site design complies with the following provisions:
 - (i) RCDG Titles 20A, Preface and Definitions, 20B, Comprehensive Plan, 20C, Land Use Regulations, 20D, City-Wide Regulations, and the Appendices that carry out these Titles.
 - (ii) The provisions of RCDG Title 20E that affect building location and general site design.
 - (iii) The Washington State Environmental Policy Act (SEPA) if not otherwise satisfied.
 - (iv) RCDG Title 20F, Administration and Procedures, to extent they provide the procedures to ensure compliance with the requirements in Subparts (I) and (iii).
- (c) Not included in the site plan review are full compliance with the building and construction codes (included in RCDG Title 20E), the requirements for construction drawings and approvals, and the specific location, size, and design of public facilities, which shall be determined during building permit review and construction drawing review. Building permits and construction drawings shall comply with the approved site plan.

[RCDG 20F.20.20-040(1)]

"A vested right shall not arise by virtue of an application for a conditional use permit, site plan entitlement, special use permit, variance, development guide amendment, right-of-way vacation, annexation, temporary use permit, zoning map amendment or any other application submitted prior to application for a building permit." [RCDG 20F.10.60-030(1)(a)]

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [RCDG 20F.30.45-100(1)]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS

1. Evaluation of a proposed conditional use must, of necessity, be based upon the specific characteristics of the proposal presented for consideration. The very nature of the CUP review process requires project-specific evaluation:

A conditional use is a mechanism by which the City may require special conditions on development or on the use of land in order to insure that designated uses or activities are compatible with other uses in the same land use district and in the vicinity of the subject property.

[RCDG 20F.40.40-020] Some conditional use proposals are inherently limited by their very nature; others must be conditioned such that in operation they will not exceed the parameters which characterized them during the permit review process.

Lofy's stated concerns assume a student enrollment of 30 - 40 students every hour. That student population level is far, far above Atkin's projected activity level. No basis exists in the record to support the accuracy of Lofy's enrollment assumption. Even if Lofy's enrollment assumption were based on a real Sylvan Learning Center located elsewhere, it would be inapplicable here where Atkin has specifically stated a much lower activity level.

2. Atkin's proposal complies with review Criterion (1). Criterion (1) requires compliance with the RCDG and the Comprehensive Plan. Parking is the only challenged area of code compliance. The preponderance of the evidence demonstrates that, if the activity levels are as presented by Atkin, more than adequate parking will be available in the immediate vicinity of the upper floor of Building A. In fact, the extent of available parking in that area means that no logical reason would exist for customers of the Sylvan Learning Center to want to or need to park in any other area of the business park.

The Comprehensive Plan analysis prepared by the Technical Committee (Exhibit 1, pp. 6 and 7) is unchallenged. The Examiner *Pro Tem* incorporates that analysis by reference as if set forth in full.

- 3. Atkin's proposal complies with review Criterion (2). The proposed Sylvan Learning Center will be located in an existing building and will not alter the exterior character or appearance of the building or site.
- 4. Atkin's proposal complies with review Criterion (3). The proposed Sylvan Learning Center will be located in an existing building and will not alter the exterior character or appearance of the building or site. Neighboring properties are developed with similar business uses. (See Conclusion 7, below, regarding circulation.)
- 5. Atkin's proposal complies with review Criterion (4). The Sylvan Learning Center's hours of operation may be different from the average Eastlake Business Park tenant. (Although it should be noted that the record contains absolutely no evidence regarding the hours of operation of any of the other existing business park tenants.) But the proposed hours of operation are not so different as to create adverse impacts. The fact that the late opening time, the peak activity time, and the closing time will not coincide with other tenants only serves to spread out and reduce traffic impact. The plan of operation creates a natural staggering of peak traffic hours.
- 6. Review Criterion (5) is not applicable: Atkin has requested no modifications of standards.
- 7. Atkin's proposal complies with review Criterion (6). The "neighborhood" within which traffic is to be evaluated could be viewed at two different scales: The area within the business park; and the area surrounding the business park.

There will be little reason for Sylvan Learning Center patrons to drive through the business park: The route from the upper terrace down to Redmond-Fall City Road is circuitous and narrow. The 185th Avenue NE/Redmond-Fall City Road intersection is signalized, facilitating ingress and egress movements to and from the upper terrace; the driveway onto Redmond-Fall City Road is not signalized. (Exhibit 4, photographs) Even if they did drive through the business park, the volume simply would not be great.

The neighborhood is characterized by large volume roads serving diverse, largely commercial land uses. (*Id.*) Traffic generated by a school of the nature and size proposed should be hardly noticeable.

- 8. Atkin's proposal complies with review Criterion (7). Sylvan Learning Center proposes to utilize a portion of the upper floor of an existing structure within the Eastlake Business Park. Adequate public facilities already serve the building. Atkin has applied for interior tenant improvements to the upper floor of the building that will not affect public facilities or services. (Exhibit 1, p. 8)
- 9. Review Criterion (8) is not applicable: The proposal is not regulated as a special use.
- 10. Atkin's Sylvan learning Center proposal meets all applicable review criteria for issuance of a CUP. The only remaining issue is whether approval needs to be conditioned and, if it does, whether the conditions recommended by the Technical Committee are appropriate.
- 11. The proposal must be conditioned to limit its scope to that described by Atkin in his application materials. The Technical Committee's Recommended Condition (A)(a) is a valiant but unsatisfactory attempt to regulate the scale of the activity. The problems with the proposed condition are: It is somewhat unclear; because it is unclear, it would be extremely difficult to monitor and/or enforce; if it is interpreted to incorporate the trip generation chart in Attachment A to Exhibit 1.5, it would be excessively and unnecessarily restrictive.

The Examiner *Pro Tem* will craft a set of conditions intended to regulate the scale of the activity such that it remains true to that which has been presented in the application without unnecessarily hamstringing the permittee.

- 12. Atkin's proposal passes the "consistency" test: The proposed use (a private educational facility) is a listed conditional use in the BP zone; density is irrelevant as the use is not residential; the entire business park is served by adequate public facilities; and the proposal will make no external building changes, thus not affecting compatibility with the surrounding area.
- 13. Any Finding of Fact deemed to be a Conclusion is hereby adopted as such.

RECOMMENDATION

The Examiner Pro Tem recommends that the application of Reed Atkin for a Conditional Use Permit to operate a private school (Sylvan Learning Center) within Building A in the Eastlake Business Park be GRANTED. Recommended conditions of approval are attached hereto as Attachment 1.

 Recommendation issued October 22, 2007.

/s/ John E. Galt

Hearing Examiner Pro Tem

Attachment:

1 - Proposed Conditions of Approval

Sylvan Learning Center CUP L060486 October 22, 2007 Page 12 of 14

PROCEDURE FOR RECONSIDERATION

Any person who participated in the hearing may file a written request for reconsideration by the Examiner *Pro Tem*. Requests for reconsideration must be filed with the Hearing Examiner's Office, City of Redmond, Mail Stop: 3NFN, 15670 NE 85th Street, P.O. Box 97010, Redmond Washington, 98073-9710, not later than 4:00 P.M. on **NOVEMBER 5, 2007**. A Request for Reconsideration shall explicitly set forth alleged errors of procedure or fact. Timely filed requests for reconsideration will be processed pursuant to RCDG, Appendix 20F-2, §VIII.C.3.

NOTICE OF COUNCIL CONSIDERATION

You are hereby notified that the foregoing Findings of Fact, Conclusions, and Recommendations have been submitted to the Mayor and Redmond City Council for their consideration and action. Council action on this item will occur at a later date, of which you will be notified by mail.

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation."

> Sylvan Learning Center CUP L060486 October 22, 2007 Page 13 of 14

6

9

15

16

12

17 18

20

19

21 22

23

24 25

26

27

28 29

30

RECOMMENDED CONDITIONS OF APPROVAL L060486

Reed Atkin (Sylvan Learning Center)

This Conditional Use Permit is subject to compliance with all applicable provisions, requirements, and standards of the Redmond Municipal Code, standards adopted pursuant thereto, and the following special conditions:

- The educational facility (Sylvan Learning Center) authorized by this Conditional Use Permit shall occupy not more than approximately 2,500 square feet on the upper floor of Building A of Eastlake Business Park. This permit is not transferable to another location within the business park nor to another location outside of the business park without additional conditional use permit review.
- 2. Not less than 11 on-site parking spaces shall be made available to this conditional use activity, all of which shall be located in the area to the north of Building A on the upper terrace.
- 3. Activity levels shall be such as to produce not more than 175 average daily vehicular trips, with the activity's peak hour traffic volume not exceeding 30 trips and the peak traffic hour of the activity not coinciding with the peak traffic hour of the surrounding streets. 8 The permittee shall maintain routine business records from which the City could calculate compliance with this condition. Such records shall be provided to the City in a timely fashion upon written request therefor from the City.

Maxima stated in this condition are gross, not net, trips: Gross trip numbers do not discount for prior office occupancy of the leased space.