

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of:) Case No. CU 21-004
Youth With A Mission) **CONDITIONAL USE PERMIT**
)

I. NATURE OF THE APPLICATION

This matter came before the Marion County hearings officer on the application of Youth With A Mission for a conditional use permit to remodel and expand an existing youth ministry campus on a 31.72-acre Acreage Residential parcel located at 7085 Battle Creek Road SE, Salem, OR 97317. (T8S, R3W, Section 25B, Tax Lots 100, 300, 400, 500, 600, 700, 800, and 1001).

II. RELEVANT CRITERIA

The standards and criteria relevant to this application are found in the Marion County Code (MCC), title 17, especially MCC 17.119 and 17.128.

III. HEARING

A public hearing was held on the application on April 1, 2021. At the hearing, the Planning Division file was made part of the record. The following persons appeared in person and provided testimony:

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| 1. | Ryan Dyer | Planning Division |
| 2. | John Rasmussen | Public Works |
| 3. | Margaret Vander-Go | Applicant's Representative |
| 4. | Samuel Mathias | For Applicant |
| 5. | Mark Grenz | For Applicant |
| 6. | Lacy Brown | For Applicant |
| 7. | Sam Thomas | For Applicant |
| 8. | Caroline Childers | For Opponents |
| 9. | Robert Edgar | For Opponents |
| 10. | David Rosling | For Opponents |
| 11. | Ken Van Ostol | For Opponents |

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| 12. | Judith Van Ostol | For Opponents |
| 13. | Kent Irving | For Opponents |
| 14. | Daniel Radokovich | For Opponents |
| 15. | Carl Stecker | For Opponents |

The hearings officer made the declaration required by ORS 197.763 and disclaimed any *ex parte* contacts, bias, or conflicts of interest. The hearings officer stated that the only relevant criteria were those identified in the 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. No objections were raised to notice, jurisdiction, bias, *ex parte* contacts, conflict of interest, or to evidence or testimony presented at the hearing. At the conclusion of the public hearing, the record was left open four weeks for the submission of new evidence, testimony, and argument; two additional weeks for the submission of responses to the new evidence, testimony, and arguments; and one additional week for the applicant's final legal argument.

IV. EXECUTIVE SUMMARY

The Applicant requests a conditional use permit to expand an existing youth ministry campus on a 31.72-acre Acreage Residential parcel. Numerous neighbors and groups oppose the application based primarily on concerns about the intensity of the proposed use, environmental impacts, traffic impacts, and impacts to groundwater supply as the area is in a Sensitive Groundwater Overlay zone. The Applicant has satisfied all of the applicable approval criteria, and the application is **APPROVED** with conditions.

V. FACTS

The subject property is located at 7085 Battle Creek Road SE, Salem, OR 97317. The property is designated Rural Residential and zoned Acreage Residential (AR). The property consists of eight irregular shaped tax lots that total 31.72 acres on the west side of Battle Creek Road SE (Battle Creek Road) between Fir Tree Drive SE (Fir Tree Drive) to the north and Deer Lake Court SE (Deer Lake Court) to the south. The property is

located south of the City of Salem and northwest of the City of Turner. Properties to the west and north are zoned Special Agriculture (SA) and AR and consist of acreage home sites, a few small farm operations, and a vineyard. Properties to the south and east are zoned AR and developed with home sites. The property is essentially bisected by Battle Creek which flows through the site. The portions of the property east of Battle Creek stretching towards Battle Creek Road are largely flat and open. The portions west of Battle Creek contain some steeper areas as well as more treed areas. The entire property is located in a Sensitive Groundwater Overlay Zone. Portions of the site near Battle Creek are located within the 100-year flood zone, and portions of the site in the southwest are located in a Geologically Hazardous Overlay zone. None of the proposed development would occur within the 100-year flood plain or in the geologically hazardous area.

Youth With A Mission (YWAM) was established in 1978 and currently operates in more than 1000 locations in over 180 countries providing training for youth missionary work. YWAM originally obtained approval to operate the campus in 1980, and expansions were approved in 1981, 1984, 1990, 1999, and 2002. YWAM submitted an application similar to the one at issue in this case in 2017, but that application was withdrawn. YWAM is currently staffed by approximately 90 people and provides training to approximately 150 youth annually. The campus currently includes office facilities, dorms, kitchens, staff housing, classrooms, multi-purpose rooms, ropes course, and a paved driveway and parking lot. YWAM seeks a conditional use permit to remodel and expand the campus in four anticipated phases.

The first phase would: (1) widen the entrance road to a two-lane private road with adjacent sidewalk; (2) improve the road extending to the water tower; (3) add an addition to Pioneer Dorm on the southwest portion of the property; (4) upgrade infrastructure for future development, including enhancing the recreational vehicle (RV) loop, upgrading

the water distribution system, and replacing the existing water tower; (5) construct a covered RV space; and (6) construct an information center with a security vestibule.

The second phase would: (1) construct an additional staff apartment to replace the existing staff residence; (2) construct a student dormitory to replace the existing duplex; (3) remodel two existing dorm buildings; (4) expand the existing kitchen and dining areas; and (5) expand an existing dorm with dining and kitchen facilities.

The third phase would: (1) construct a second staff apartment to replace the existing multi-purpose room; (2) relocate the current play area; (3) construct a second student dormitory to replace the existing dormitory; (4) remodel the existing multi-purpose building into a hospitality suite; (5) remodel the existing hospitality suite into staff office space; and (6) construct two additional office spaces.

The fourth phase would: (1) construct an assembly hall replacing the existing meeting space; (2) construct staff family housing and hospitality housing; and (3) remodel existing staff housing into office space.

An applicant has the burden of proving all applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

“‘Preponderance of the evidence’ means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests.” (Citation omitted.)

An applicant must prove, by substantial evidence in the whole record, that it is more likely than not that each criterion is met. If the evidence for any criterion is equally likely or less likely, an applicant has not met its burden and the application must be denied. If the evidence for every criterion is in an applicant’s favor, then the burden of proof is met and the application must be approved.

VI. DISCUSSION

A. Preliminary Issues

Opponents argue that the County does not have authority to consider the application because YWAM is currently in violation of the MCC. MCC 17.110.680 provides in pertinent part:

“No permit for the use of land or structures or for the alteration or construction of any structure shall be issued and no land use approval shall be granted if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action, is in violation of local, state or federal law, except federal laws related to marijuana, or is being used or has been divided in violation of the provisions of this title, unless issuance of the permit or land use approval would correct the violation.”

1. The Ropes Course

Opponents argue that YWAM is currently violating the MCC and their earlier conditions of approval. First, opponents argue that an existing ropes course is not an approved permitted use. According to opponents, an entity named Salem Ropes, LLC (Salem Ropes) operates the ropes course on the YWAM property. Opponents provided evidence establishing that Salem Ropes is open to the public for a charge.¹ According to opponents, a commercial ropes course was never approved for the property, is not allowed on the property, and cannot be approved on the property. Therefore, according to opponents, YWAM is “in violation of local” laws and this application must be dismissed.

As discussed earlier, there have been numerous approvals for YWAM on the property over many decades. The ropes course first specifically appears as part of an approved site plan in the 2001 comprehensive plan and zone change, conditional use permit, and lot line adjustment, but it appears to be pre-existing at that point. In 1999, YWAM sought an adjustment to its existing site plan to add a climbing tower to an existing outdoor leadership training course and requested an adjustment to build the climbing wall taller

¹ YWAM does not dispute this. Although YWAM explains that Salem Ropes was created for liability purposes and is essentially the same as YWAM.

than the 35-foot height limitation. The County approved the climbing tower but denied the adjustment request for a tower higher than 35 feet. The “ropes course” appears to be the current status of that outdoor leadership training course, although it was not specifically mentioned in the 1999 case as such. In an April 26, 2021 memorandum, County planning staff explain that while the ropes course was likely allowable as an accessory use to the missionary training use, the current commercial use of the ropes course is not an approved use of the property.

YWAM responds that the ropes course has been an established use on the property for over twenty years and that the level of development associated with the ropes course does not require a building permit or County approval independent of the other development on the property. YWAM also argues that the fact the ropes course is rented out to the public does not render the use impermissible. According to YWAM, it is a well-accepted practice that religious organizations rent out their facilities as a means of supplementing revenue for their associated missions.²

MCC 17.110.680 prohibits approval of a permit if the land is being used in violation of among other things, the MCC. The County has a process for determining whether there is a violation of the MCC – the code violation process. Under the code violation process, if the County believes a property is being used in violation of the MCC, the County may issue a citation pursuant to MCC 1.25.030. Jurisdiction over allegations of code

² YWAM cites MCC 17.110.472 and 17.110.158 in support of this position. I do not see that those provisions particularly help YWAM. MCC 17.110.158 is the definition of “Conference grounds” which means “a retreat or meeting place used for organized discussion and consultation, including overnight accommodations for conferees.” I do not see what “Conference grounds” has to do with a commercial ropes course. MCC 17.110.472 is the definition of “Religious organization (church)” which means “an establishment operated by religious organizations for worship and religious training or study of its members and the administration of such establishments. If a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship is allowed on real property under the local zoning ordinances, the county shall allow the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including worship services, religion classes, weddings, funerals, child care and meal programs, but not including private school education for pre-kindergarten through grade 12 or higher education.” While the definition does include “worship services, religion classes, weddings, funerals, child care, and meal programs,” it does not include anything that would specifically include a ropes course. MCC 17.110.472 merely codifies the “Mini-RLUIPA” statute of ORS 215.441. While perhaps YWAM could establish that the ropes course is a non-enumerated “activit[y] customarily associated with the practices of religious activity,” that is a question for another day.

violations lies with “[a]ny justice court or circuit court[.]” MCC 1.25.050.³ Unlike land use applications where the burden of proof is on the applicant, in code enforcement actions “the county shall have the burden of proving the violation of the ordinance(s) by a preponderance of the evidence.” MCC 1.25.130(C). There is no dispute that there are no current enforcement actions regarding the YWAM property. While opponents and County planning staff may be correct that the commercial use of the ropes course is a violation of the MCC, this conditional use application is not the proper venue to decide that issue. Unless and until a code violation is found by the proper tribunal, MCC 17.110.680 does not divest the County of jurisdiction over the application.⁴

2. The RV Parking Spaces

YWAM currently has six RV parking spots, and the application seeks to relocate the RV parking area and increase the number of RV parking spaces to twelve. Opponents argue that YWAM is currently violating the MCC by operating an impermissible RV park. Opponents argue that RV parks are not allowed in the AR zone as a permitted, conditional, or any other kind of use – they are only allowed in Commercial zones. According to opponents, because YWAM is violating the MCC by operating an RV park the application must be dismissed under MCC 17.110.680. As explained earlier, even if YWAM is violating the MCC by operating an impermissible RV park, a code enforcement action is the proper way to determine whether such a violation is occurring and to cure any violation. Unless and until a code enforcement action establishes that the RV parking spaces are a code violation, MCC 17.110.680 does not require that this application be dismissed.

Unlike the ropes course, however, the current application seeks to change the existing RV parking space use. Therefore, the question of whether the proposed use is permissible

³ Code violations are generally heard by the Marion County Justice Court.

⁴ This application involves numerous proposed expansions of the existing conditional use permit. I do not understand the application to propose any changes to the existing ropes course and climbing tower. The disposition of this decision has no bearing on the permissibility of the ropes course. Whatever was allowed before this application is allowed after this decision – no more no less. I take no position on whether the alleged commercial use of the ropes course is a permissible use of the property.

is relevant. Opponents argue that RV parks are not currently allowed in the AR zone and never were. County planning staff explains that while RV parks are not permitted in the AR zone, MCC 17.126.020(A)(13) allows one residential RV parking space in all zones subject to certain limitations. County planning staff further explains that the 1991 conditional use decision approved a site plan including six RV spaces. According to County planning staff, this means the existing six RV spaces are now nonconforming uses. County planning staff takes the position that YWAM has not established that such a nonconforming use may be expanded.

YWAM argues that the six RV spaces were approved as part of its conditional use approval in the 1991 case and are therefore not nonconforming uses, but rather a conforming use.⁵ MCC 17.114.110 provides:

“Any use which is permitted as a conditional use as provided in this title shall not be deemed a nonconforming use, but shall, without further action, be deemed a conforming use, qualified with such conditions as the director, planning commission or hearings officer has required.”

Opponents may be correct that the RV spaces should not have been approved in the 1991 conditional use case, but they were. Any challenge to the existing RV spaces is an impermissible collateral attack on the earlier decision. YWAM is correct that once the RV spaces were approved as part of the earlier conditional use permit, they are now conforming uses under MCC 17.114.110. Just because the six RV spaces are a conforming use, however, does not mean that YWAM is free to expand the number of RV spaces. As additional RV spaces are not permitted in the AR zone, no additional spaces may be approved. Although no additional spaces may be approved, absent some specific prohibition, I see no reason that the spaces cannot be moved as proposed, as long as no more than six RV spaces are included.

3. Large Events

⁵ Opponents argue that YWAM is also violating the 1991 case approval of the RV spaces by charging fees for the use of the spaces. Again, that is a code enforcement issue that is not property at issue in this case. This decision takes no position on whether YWAM may charge fees for the RV spaces.

Opponents argue that YWAM holds “large events” on the property that exceed the uses allowed under the approved applications. According to opponents, this is another reason why YWAM is in violation of the MCC and under MCC 17.110.680 the application should not be considered. This argument is not particularly well developed. Apparently, there are moving days at the beginning and end of terms that have more traffic than usual. As discussed later, however, those events are included in the traffic impact analysis (TIA). Even if some events in the past may have exceeded the scope of YWAM’s approval, that is not the same thing as a continuing violation of the MCC as alleged regarding the ropes course and RV spaces. In any event, as discussed earlier, the code enforcement process is the way to address any such alleged violation. As there are no violations established, the County has authority to consider the application.

4. Campus Population

Opponents argue that YWAM is currently exceeding the number of students allowed on campus under the conditions of previous approvals. According to opponents, YWAM is limited to 200 students, and YWAM is exceeding that number. Therefore, opponents argue that YWAM is in violation of a condition of approval and the application cannot be considered under MCC 17.110.680.

Initially, YWAM explains the 1990 conditional use approval established that the “maximum residential capacity of the subject property is 200 persons.” YWAM explains that while there are often more than 200 people on-site on any given day, there are only 185 beds available for residential users.⁶ Also, as explained earlier, even if YWAM were exceeding the number of allowed residential users that would be a code enforcement matter. Finally, MCC 17.110.680 provides that it does not bar consideration of the application if “issuance of the permit or land use approval would correct the violation.” In the present case, approval of the proposed application would cure any violation of the 200-person residential limit.

⁶ YWAM further explains that the RV spaces can accommodate 14 additional residential users. So even at full capacity there would only be 199 residential users.

The County has authority to consider the application.

B. General Conditional Use Approval Criteria

All conditional use permit applications must satisfy MCC 17.119.070, which provides:

“Before granting a conditional use, the director, planning commission or hearings officer shall determine:

- “A. That it has the power to grant the conditional use;
- “B. That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;
- “C. That any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.”

A conditional use permit application may be decided by either the planning director, the planning commission, or the hearings officer.⁷ In this case, the planning director forwarded the case to the hearings officer for the initial decision. MCC 17.128.030(E) provides that “[r]eligious organizations and expansions not qualifying under MCC 17.128.020(I), and related conference and residence facilities” are conditional uses in the AR zone.⁸ Therefore, the hearings officer has the power to grant the conditional use (if all the applicable approval criteria are satisfied). MCC 17.119.070(A) is satisfied.

MCC 17.119.070(B) requires that the “conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone[.]” As discussed later, MCC 17.128.040(A), one of the approval criteria for conditional uses in the AR zone requires that the “conditional use as described by the applicant will be in harmony with the purpose and intent of the zone.” As the two approval criteria are essentially identical, as

⁷ A conditional use permit application may also be decided by the Board of Commissioners if they decide to call the case up on their own motion. MCC 17.110.165.

⁸ YWAM does not qualify under MCC 17.119.020(I) as an outright permitted use because the use is more than 20,000 square feet in total area.

long as the applicant satisfies MCC 17.128.040(A) then MCC 17.119.070(B) will also be satisfied.

MCC 17.119.070(C) requires that “any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.” All the proposed conditions of approval are necessary for the public health, safety, or welfare as they go towards satisfying the applicable approval criteria. MCC 17.119.070(C) is satisfied.

A. AR Zone Conditional Use Approval Criteria

MCC 17.128.040 provides the approval criteria for conditional uses in the AR zone:

“The following criteria apply to all conditional uses in the AR zone:

- “A. The conditional use as described by the applicant will be in harmony with the purpose and intent of the zone.
- “B. The use will not increase traffic beyond the capacity of existing roads.
- “C. Adequate fire protection and other rural services are, or will be, available when the use is established.
- “D. The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.
- “E. Any noise associated with the use will not have a significant adverse impact on nearby land uses.
- “F. The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.”

1. Purpose and Intent of the Zone

MCC 17.128.040(A) requires that the “conditional use as described by the applicant will be in harmony with the purpose and intent of the zone.” MCC 17.128.010 provides the purpose of the AR zone:

“The purpose and intent of the acreage residential zone is to provide appropriate regulations governing the division and development of lands designated rural residential in the Marion County Comprehensive Plan. Acreage residential zones are areas that are suitable for development of acreage homesites. Such areas are necessary to meet the housing needs of a segment of the population desiring the advantages of a rural homesite. It is the intent that residential sites be provided with adequate water supply and wastewater disposal without exceeding the environmental and public service capability of the area or compromising the rural character of the area.”

The first sentence of MCC 17.128.010 merely explains that the AR zone provides appropriate regulations to govern lands designated Rural Residential in the Comprehensive Plan. To the extent this sentence has any applicability, the proposed use is in harmony with this purpose and intent.

The second and third sentences of MCC 17.128.010 state that AR zones are areas that are suitable for acreage home sites and are necessary to meet the housing needs of people desiring a residential home site. Opponents argue that the proposed use is not an acreage home site and is therefore not in harmony with the purpose and intent of the zone. While the proposed use is not necessarily an acreage home site, that does not mean it is not in harmony with the purpose and intent of the zone. Religious organizations and related conference and residence facilities are clearly contemplated as an allowable use in the AR zone. Furthermore, a number of other permitted and conditional uses are clearly not acreage home sites, such as: farm uses (MCC 17.128.020(B)), government playgrounds and parks (MCC 17.128.020(C)), wetlands (MCC 17.128.020(D)), wireless communication facilities (MCC 17.128.020(H)), kennels (MCC 17.128.030(A)), day nursery (MCC 17.128.030(C)), commercial uses

in conjunction with farm uses (MCC 17.128.030(D)), and schools (MCC 17.128.030(F)). If only acreage home sites were in harmony with the purpose and intent of the AR zone then the AR zone would not specifically allow so many non-acreage home site uses. Conditional uses that are specifically provided for in the AR zone are in harmony with the purpose and intent of the zone. *See Craven v. Jackson County*, 94 Or App 49, 764 P2d 931 (1988), *aff'd* 308 Or 281, 779 P2d 1011 (1989) (while the legislature has embraced the preservation of agricultural land for farm uses as the intent of EFU zoning, it has also specifically authorized a large number of nonfarm uses, which it presumably concluded are either supportive or at least not destructive of farm uses, if appropriately limited).

The third sentence states that the intent of the AR zone is that “residential sites be provided with adequate water supply and wastewater disposal without exceeding the environmental and public service capability of the area or compromising the rural character of the area.” As the parties all agree, the remaining conditional use approval criteria of MCC 17.128.040 require the applicant to demonstrate that there would be an adequate water supply and adequate wastewater disposal. Opponents argue that the third sentence also requires the applicant to demonstrate that the proposed use itself would not “compromis[e] the rural character of the area.” According to opponents, the proposed increase in staff and students on the campus would have the effect of making the use urban rather than rural.

I do not see that the third sentence of MCC 17.128.010 adds an independent purpose or intent of ensuring “the rural character of the area.” The third sentence concerns adequate water supply and wastewater disposal. When providing adequate water supply and wastewater disposal, the third sentence requires that such facilities be provided without (1) exceeding the environmental and public service capability of the area or (2) compromising the rural character of the area. In other words, the question is whether the adequate water supply or wastewater disposal method

compromises the rural character of the area – not whether the proposed use itself compromises the rural character of the area. This interpretation appears to be consistent with the interpretation of the hearings officer in the 1981 YWAM conditional use case:

“The purpose and intent of the AR zone is primarily to provide for acreage homesites. Each parcel must be able to provide an adequate water supply and wastewater disposal system that will not exceed the environmental capabilities of the area or compromise the rural character of the area * * *. Church-related facilities were contemplated in the AR zone * * *. *Provided that the water and sewer capabilities are sufficient on the parcel to accommodate the buildings and higher density population, this expansion will be in harmony with the purpose and intent of the AR zone.*” Case No. 81-15, May 5, 2001, p 4) (emphasis added).⁹

Planning staff states that MCC 17.128.040(A) does not constitute a separate approval criterion – or at least an approval criterion with any standards that must be met. According to planning staff, by meeting the remaining requirements of MCC 17.128.040(B) through (F) an applicant satisfies MCC 17.128.040(A):

“Through inclusion as a permitted use in MCC 17.128.020, religious organizations are undoubtedly an anticipated use in the AR zone. Even larger religious organizations with residential and conference space are anticipated as a conditional use, and therefore do not inherently compromise the harmony and intent of the zone. Therefore, the answer to MCC 17.128.040(A) depends not on the use per se, but whether the expansion will compromise the surrounding environmental and public service capabilities, or threaten the area’s rural character. Those questions are best answered by looking to the additional conditional use criteria, MCC 17.128.040(B) – (F). If it is found that the proposal is compliant with the criteria in [MCC 17.128.040](B) – (F), then [MCC 17.128.040](A) is satisfied.” Staff Report 3-4.

⁹ I had planned to ask about the hearings officer’s findings from the 1981 case well before the public hearing in this case. It was not until just before the public hearing that I learned that Wallace Lien (Mr. Lien), who was the hearings officer in the 1981 case, was representing some of the opponents in the present case. Mr. Lien makes some excellent points about the state of land use law in 1981 and that this specific issue was not raised in the prior case. I agree with Mr. Lien that I am not bound by the language in the 1981 case. I only cite the language from that case as it coincides with my interpretation of the provision. To be clear, I do not see Mr. Lien’s participation as anything other than an ironic coincidence and a reflection of the small number of land use attorneys in the area.

The problem with staff's interpretation is that it essentially removes MCC 17.128.040(A) as an approval criterion. If all that is required to satisfy the conditional use criteria is to satisfy MCC 17.128.040(B)-(F) then MCC 17.128.040(A) is meaningless. When an ordinance lists approval criteria, all of the approval criteria should be given meaning. Furthermore, there could be situations where an applicant could satisfy MCC 17.128.040(B)-(F) but still result in a water supply or wastewater disposal method that compromises the rural character of an area. For example, extension of public water and sewer systems to an AR zone would almost certainly provide adequate water supply and wastewater disposal, which would satisfy the requirements of MCC 17.128.040(B)-(F), but such urban facilities would also likely compromise the rural character of the area.

YWAM proposes to continue and/or expand the use of its two existing wells and expand the current septic system. The use of two wells and a septic system would not compromise the character of the rural area, as that is the typical manner of providing water and wastewater disposal in the rural area. As long as YWAM can demonstrate that it can provide an adequate water supply and wastewater disposal, the proposed use would be in harmony with the purpose and intent of the AR zone and satisfy MCC 17.128.040(A). Those issues are addressed later.

2. Traffic

MCC 17.128.040(B) requires that the "use will not increase traffic beyond the capacity of the system." Opponents argue that the area is rural with narrow roads and no sidewalks. According to opponents there is already too much traffic in the area and the proposed expansion would only make things worse. Furthermore, opponents argue the increased traffic from the proposed expansion would exacerbate already dangerous conditions in the area.

The applicant's traffic engineer prepared a traffic impact analysis (TIA). The TIA analyzed the entrance to the YWAM facility on Battle Creek Road, the SE Delaney Road

(Delaney Road)/Battle Creek Road intersection, and the Delaney Road/SE Parrish Gap Road (Parrish Gap Road) intersection. Battle Creek Road is a Major Collector, Delaney Road is an arterial, and Parrish Gap Road is a Minor Collector. The County analyzes traffic capacity using a Level of Service (LOS) system. In general, the required LOS is E or better (LOS A is the least traffic and LOS F is failing traffic facilities). The TIA explains that currently YWAM generates 60 AM peak hour trips and 47 PM peak trips on a typical day and 110 AM peak hour trips and 72 peak hour trips on a peak day.¹⁰ The existing LOS for the three intersections range from A/A at the YWAM entrance for both AM and PM peak hours; A/B for the Delaney Road/Battle Creek intersection AM and PM peak hours and the Delaney Road/Parrish Gap Road PM peak hour; and A/C for the Delaney Road/Parrish Gap Road AM peak hour. Despite opponents' contentions, the current traffic situation is well below capacity.

The TIA explains that the full proposed expansion would generate 48 additional AM peak hour trips and 43 additional PM peak hour trips on a typical day and 123 additional AM peak hour trips and 80 additional PM peak hour trips on a peak day. The TIA explains that even using the worst-case scenario peak day analysis, the LOS for the three intersections barely changes. The LOS for the YWAM entrance would change from A/A and A/A to A/B and A/B (AM peak and PM peak). The LOS for the Delaney Road/Battle Creek intersection would change from A/B and A/B to A/C and A/B. The LOS for the Delaney Road and Parrish Gap intersection would stay the same at A/C and A/B. Therefore, even using peak days as the standard there would be more than adequate capacity for the proposed expansion.

YWAM's traffic engineer's TIA is very persuasive. Opponents rely on anecdotal evidence and do not persuasively challenge the TIA's findings. YWAM's traffic engineer further explains that the TIA considered the proposed expansion of 406 people. The TIA conservatively evaluated the trip generation for up to 465 students and staff plus 50

¹⁰ LOS is determined using peak hour trips.

guests or deliveries per day – or a total of 515 users. Opponents argue that the TIA does not take into account day users. YWAM’s traffic engineer responds:

“The opposition indicated that the traffic study did not take into account 90 day users that are anticipated to use the site. The YWAM directors do not anticipate 90 day users as part of the expansion plan. However, the site capacity evaluated in the TIA is greater than 90 day users plus the anticipated number of students and staff. Therefore, the TIA still provides a conservative estimate of the potential traffic impacts from the expansion and all findings are relevant.” DKS April 28, 2021 Memorandum 1.

Finally, YWAM’s traffic engineer explains that the ropes course and potential large events would not cause traffic capacity to be exceeded:

“Based on discussions with YWAM staff, the ropes course is primarily used by large groups. While it may serve up to 5,000 people in a season, the vast majority of those are large groups that arrive by bus or carpool. On average, the ropes course will likely generate fewer than five vehicle trips during any peak hour, and was accounted for in the estimated number of ‘guests or deliveries’ referenced in the TIA.

“YWAM has no current plans to rent out the facilities for large events. Even if large events were hosted on-site, they would likely occur on weekends and would not coincide with peak hours of the roadway system.” *Id.* at 1-2.

Opponents also cite anecdotal evidence that the roadway is dangerous. To the extent safety is an applicable approval criterion, as MCC 17.128.040(B) refers to “capacity” of the traffic system, the TIA explains that both the Delaney Road/Parrish Gap Road and Delaney Road/Battle Creek Road intersections have higher than 90th percentile crash rates. The TIA explains that a safety improvement project is currently being designed for the intersection of Delaney Road and Battle Creek Road. Initially, planning staff recommended that YWAM make a proportionate traffic share contribution to the safety improvements for that intersection. Planning staff eventually dropped that recommendation, likely because there is no essential nexus between the substandard

intersection and YWAM's development. In other words, YWAM is not responsible for the dangerous state of an existing intersection and the proposed development would not make the intersection any more dangerous. YWAM also offered to make other improvements to the road system. To the extent safety of the roadway is a valid consideration, the proposed development would not cause the safety of the traffic system to be inadequate.

MCC 17.128.040(B) is satisfied.

3. Adequate Fire Protection and Other Rural Services

MCC 17.128.040(C) requires that "[a]dequate fire protection and other rural services are, or will be, available when the use is established." The Turner Fire District (TFD) is the applicable fire protection service for the property. Initially, YWAM has been in contact with TFD regarding requirements for adequate fire protection. YWAM has revised the site plan to allow for wider access roads and an additional emergency access road at the north end of the campus. YWAM will be required to have adequate water on-site for fire suppression purposes, and this water will have to be brought in from off-site rather than pumped from YWAM wells. When building approval is sought, YWAM will have to meet all fire code requirements. YWAM has done all that TFD has asked for at this point. While there could certainly be more information on this matter, YWAM has made changes to the site plan to accommodate TFD, YWAM will ensure adequate off-site water is available for fire suppression, and YWAM will be required to meet all TFD building requirements. Therefore, with conditions of approval, it is feasible for there to be adequate fire protection services for the property.

Opponents argue that there is not an adequate septic system for the proposed expansion. The staff report explains:

"The subject property is currently served by a septic system permitted by a Marion County Onsite Permit. Marion County Septic commented that any expansion of the

system would require a Water Pollution Controls Facilities (WPCF) permit with Department of Environmental Quality (DEQ). Applicants submitted a report from Cascade Earth Sciences (CES) that states that DEQ has ‘performed a site evaluation for the site and found the soils suitable for the installation of an onsite wastewater treatment system with projected flows of up to 24,400 gallons per day based on 461 occupants and 90 day-users’ * * *. CES states in their report that they have worked with applicants to develop a conceptual design to serve the proposed facilities. DEQ issues a site evaluation on December 7, 2020, outlining the design and conceptual requirements that applicants must comply with. DEQ did not submit any comments expressing concern with the proposal. Compliance with DEQ installation requirements can be made a condition of approval. Based on the evidence in the record, sufficient septic services will be available at the time of development.” Staff Report 4.

Opponents raised concerns regarding the numbers used in determining that an adequate septic system could be provided. YWAM used inflated numbers from the original hydrological report to establish that even using a worst-case scenario adequate septic service could be provided. As discussed later, the YWAM has issues regarding how much water it may use. Just because the septic system would be capable of handling the amount of flows described in the septic system feasibility study, does not mean that YWAM will necessarily use that amount of water. As discussed later, there are strict limits on the amount of water YWAM may use. The proposed septic system, however, would be more than adequate to serve the proposed expansion.

YWAM also establishes that the Marion County Sheriff’s Office (MCSO) provides emergency response services to the property, and the MCSO did not indicate that there are any concerns regarding its ability to provide adequate service. YWAM is located within the Santiam Memorial Hospital Ambulance district. YWAM is located within the Cascade School District.

Except for water, which is addressed separately, adequate fire protection and other rural services are, or will be, available when the use is established.

4. Significant Impact on Watersheds, Groundwater, Fish and Wildlife Habitat, Soil and Slope Stability, and Air and Water Quality

MCC 17.128.040(D) requires that the “use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.” Opponents argue that the proposed expansion would significantly adversely affect a number of these areas.

YWAM submitted a Geotechnical Review from their expert that explains that soil and slope stability is not a concern for the proposed development. I agree with YWAM’s expert that the proposed expansion would not significantly adversely affect soil and slope stability. I also agree with YWAM that the proposed expansion would not significantly adversely affect fish and wildlife habitat or air and water quality. YWAM’s experts established that the proposed septic system would not pollute Battle Creek, which could potentially impact fish and water quality. YWAM’s expert established that there would be no development in the floodplain other than storm water detention facilities, which would be sited according to County requirements. The increase in traffic would hardly be enough to significantly impact air quality. Except for water, the proposed use would not have a significant impact on these areas.

The crux of this case is water or the lack thereof. Under both MCC 17.128.040(C) and 17.128.040(D), YWAM must establish that it has adequate water for the proposed use and that its use of that water will not have a significant adverse impact on groundwater in the area. The subject property and the surrounding area are in a Limited Groundwater Area and there is a Sensitive Groundwater Overlay on the property. Under existing state law, YWAM currently has the right to use 20,000 gallons of water per day. YWAM currently uses some but not all of that 20,000 gallons per day for use on the property and to provide water to seven other nearby users from its two wells. The proposed expansion would result in in significantly more water users. YWAM’s

hydrogeologist determined that based on average water consumption, YWAM would need 42,771 gallons per day. YWAM's hydrogeologist determined that the use of 42,771 gallons per day would not have a significant impact on the availability or quality of nearby wells. YWAM's hydrogeologist's report was peer reviewed, and the peer review agreed with the conclusions. YWAM subsequently retained additional experts that agree with the conclusions.¹¹

Opponents submitted overwhelming testimony and evidence that the wells in the area are poor and have been declining. Nearby wells range from bad to worse and are trending in the wrong direction. Opponents' testimony is extremely persuasive, and I have no doubt that their wells are poor and they are justly concerned. Opponents also challenge the conclusions of YWAM's hydrogeologists. Opponents point to conflicting evidence regarding the data from certain wells, the relationship between YWAM's wells and Battle Creek, and testimony from the Oregon Water Resources Department that the water used by YWAM is connected to the aquifer used by some nearby wells. YWAM's experts have submitted evidence responding to opponents' challenges.

There is certainly conflicting technical evidence in the record regarding the nature of YWAM's wells and whether they are interconnected with wells in the nearby area or Battle Creek. Ultimately, however, I do not think it matters what the answers to those questions are. YWAM currently has the right to use 20,000 gallons per day. Under existing state law, I do not see that is possible, let alone feasible, for YWAM to increase its daily usage above that level for residential use. While theoretically YWAM could obtain someone else's existing water rights, such acquisition is entirely speculative at this point and there is no evidence to suggest that it is feasible.¹² An approval of the proposed expansion would not increase the amount of water YWAM is entitled to use above the current level. In other words, YWAM is allowed to use 20,000 gallons of water per day

¹¹ The original hydrogeologist unfortunately passed away.

¹² Even if YWAM obtained someone else's water rights that would not mean additional water would be used only that different people would be using the same amount of water.

now – and if the application is approved YWAM would be allowed to use 20,000 gallons of water per day tomorrow. Therefore, the only relevant question is whether YWAM can operate the proposed expansion on only 20,000 gallons of water per day.¹³

YWAM submitted an analysis from Mark Grenz (Grenz) of Multi/Tech Engineering Services that described the proposed methods of using less than 20,000 gallons of water per day. Grenz explains that YWAM supplies water to seven homes that are not part of the YWAM facility. Those seven homes consume around 2200 to 2400 gallons per day. Grenz also explains that the YWAM wells leaked in the past, which affected the numbers from the wells, but the leaks have been repaired. Grenz summarizes the situation as follows:

“The present Master Plan sets out the goal to move from 130 people to a revised population of 406 people, approximately three (3) times as many occupants. In addition, accounting for the non-resident staff (8-hour period) at the site along with the estimated 30 student type visitors each day (2 to 3 hours per day). Using that, the expected daily water consumption would move from approximately 9,000 to 9,800 gallons per day (includes the 2,200 gallons per day for the 7 homes) to 24,970 to 32,040 gallons per day (this includes the estimated 2,200 gallons per day for the existing 7 homes on the system). Without the 7 homes, the projected water amount would be 22,770 to 29,640 gallons per day.

“* * * * *

“Based on this information, the projected flows would need to be reduced by approximately 20 to 37 percent. The goal would be to get the per capita water consumption down to 38-40 gallons per day for the residing group and less than 3 gallons per day for the off-site staff and visiting students.” April 14, 2021 Memorandum 2.

¹³ In the event a reviewing body disagrees with my conclusion that it is not relevant whether the use of YWAM’s wells would affect nearby wells, while it is a close call, I am most persuaded by YWAM’s final experts who explain that “the proposed use would not have a significant impact on the availability or quality of groundwater to the surrounding properties.” As alternative findings, I adopt and incorporate the April 28, 2021 memorandum from David Weatherby and Courtney Savoie in this decision.

Grenz explains that there are various methods to reduce the per capita water consumption. Grenz lists low flow fixtures such as shower heads, toilets, faucets, dishwashers, and washing machines that can reduce their usage between 40 and 55 percent. Grenz also discusses specific equipment that produce low flows and then switch to substantially lower flows after a period of time. Grenz also explains that rainwater could be captured to use for gray water purposes. Opponents argue that this is unlikely to reduce water usage below 20,000 gallons per day, particularly given that the majority of residents will be students who are unlikely to follow rules. While it is not a certainty that YWAM can reduce water consumption for the proposed expansion below 20,000 gallons per day, the listed methods are possible and likely or reasonably certain to succeed. Therefore, with conditions of approval it is feasible that there is adequate water for the proposed use and the proposed use will not have a significant adverse impact on groundwater. *Gould v. Deschutes County*, 216 Or App 150, 161 (2007) (citing *Meyer v. City of Portland*, 67 Or App 274, 281-82, rev den 297 Or 82 (1984) for when conditions of approval are feasible).

Furthermore, this is not a situation where either the entire proposed use can satisfy the 20,000 gallons per day limitation or not. The proposed conditional use is for multiple phases. At each phase, YWAM must satisfy the 20,000 gallons per day limitation. It is possible that all of the phases can be implemented while meeting the 20,000 gallons per day limitation. It is possible that some of the phases, but not all, can be implemented while meeting the 20,000 gallons per day limitation. It is also possible that none of the proposed phases can meet the 20,000 gallons per day limitation. YWAM may implement as many phases of the master plan as can meet the 20,000 gallons per day limitation. YWAM runs the risk of developing buildings it may not be able to fully use, but that is its risk to take.

While it is feasible to satisfy the 20,000 gallons per day limitation, there need to be conditions of approval to ensure that YWAM actually meets and can prove compliance

with the limitation. YWAM has proposed a condition of approval that describes water “monitoring.” Opponents argue that monitoring is not sufficient and “metering” is necessary. I am not sure that YWAM means something different by “monitoring” than by “metering” as the proposed conditions of approval also include the installation of meters. To the extent there is a difference, I agree with opponents that there needs to be a “meter” to accurately register the amount of water used per day. With the understanding that “monitoring” includes using meters to determine precise water usage, the following conditions of approval suggested by YWAM are imposed:

- A. Water Conservation Requirements: YWAM will develop requirements and limitations on water use to minimize the amount of groundwater consumed by residents and off-site users.
- B. Water Use Monitoring Plan: A water-use monitoring plan shall be submitted to Marion County to monitor and report the water use from the proposed development. The monitoring plan shall be developed by a registered geologist or licensed professional engineer and shall include the installation of water meters on all wells used by YWAM. The plans shall be implemented before building permits are issued.
- C. Well-Water Monitoring Plan: A well-water monitoring plan shall be submitted to Marion County to monitor and report the impact of water use from the proposed development. The monitoring plan shall be developed by a registered geologist or licensed professional engineer. The plan shall be implemented before building permits are issued.
- D. All data gathered under these plans shall be submitted to Marion County on an approved form or in an approved electronic format on a quarterly basis.¹⁴

¹⁴ YWAM proposed reporting on an annual basis, but if YWAM were to use too much water for possibly up to almost a year or during peak water need times during the summer and YWAM's are incorrect about the potential effect on nearby wells then significant damage could occur before the County became aware of the excessive use.

Opponents argue that conditions of approval would not be sufficient to prevent YWAM from violating the 20,000 gallons per day limit and there would be no recourse in case of a violation. MCC 17.110.680 provides in pertinent part:

“Any land use permit granted pursuant to this title shall be subject to revocation by the director if the director determines that the application for the permit included any false or misleading information, if the conditions of approval have not been complied with or are not being maintained, or if the land use is not being conducted in full compliance with the requirements of local, state and federal laws.” (Emphases added).

While code enforcement procedures have their drawbacks and difficulties, they are more than capable of remedying code violations and revoking permits if the violations are not remedied. The possibility that an applicant might not satisfy conditions of approval and code enforcement of such violations may be difficult is not a basis to deny an application.

MCC 17.128.040(C) and (D) are satisfied.

5. Noise

MCC 17.128.040(E) requires that “[a]ny noise associated with the use will not have a significant adverse impact on nearby land uses.” Opponents argue that the existing use already is noisy and that the proposed expansion would only make the noise worse. YWAM states that the greatest potential for noise would come from outdoor group activities and maintenance of the property. While some opponents argue that the noise already adversely impacts them, other neighbors state that the noise is not a problem at all. The group outdoor activities generate noise through singing and cheering, not through amplification. The group outdoor activities and property maintenance would also occur largely during the day rather than at night when noise would be more disturbing to neighbors.

MCC 17.128.040(E) does not require that there be no impacts from noise whatsoever – only that such noise will not have a significant adverse impact. While a noise study certainly could have been instructive in demonstrating the effects of noise along the property lines, I do not see that is a prerequisite to satisfying MCC 17.128.040(E). While there is conflicting evidence on this issue and the standard is rather subjective, I do not see intermittent singing and cheering or standard property maintenance such as done on other properties in the area rises to the level of significant adverse impacts.

MCC 17.128.040(E) is satisfied.

6. Water Impoundments or Mineral and Aggregate Resources

MCC 17.128.040(F) requires that the “use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.” The property is not located near any potential water impoundments or sites identified in the Marion County Comprehensive Plan as significant sources of mineral or aggregate. Therefore, the proposed use would not have any significant adverse impacts on potential water impoundments or mineral or aggregate sites. MCC 17.128.040(F) is satisfied.

7. Other Issues

Opponents argue that the site plan does not have a sufficient level of detail because YWAM has not provided the proposed elevations, square footages, and setbacks. As YWAM explains, it is not required to supply this level of detail at this stage, as this is not site plan review. YWAM is not requesting any variances or adjustments to any standards. YWAM will be required to comply with all applicable setbacks as well. There also appears to be some confusion regarding stream setbacks and the accuracy of the FEMA Special Flood Hazard Area Map for Battle Creek. While it does not appear that any

development (other than storm water management) is proposed for the floodplain, a condition of approval is included that requires YWAM to acquire floodplain permits if any development is proposed for the floodplain.

Opponents' arguments do not provide a basis to deny the application.

All of the applicable approval criteria are satisfied.

C. DECISION

It is hereby found that the Applicant has met the burden of proving that the approval criteria for a conditional use permit. The hearings officer **APPROVES** the proposal with the following conditions of approval.

D. CONDITIONS OF APPROVAL

1. The Applicant shall obtain approval for all required permits from the Marion County Building Inspection Division.
2. The Applicant shall obtain a WPCF permit with DEQ.
3. Prior to issuance of building permits, Applicants shall comply with all requirements of the Oregon Water Resources Department.
4. Applicant shall provide proof to the satisfaction of the Planning Director that the record discrepancies regarding the Public Water System be reconciled with Oregon Water Resources Department and with Oregon Drinking Water Services.
5. In accordance with the requirements listed in MCC 17.178, the Applicant shall obtain flood plain permits through Marion County Planning for any development proposed in a mapped flood hazard area.
6. Prior to Building permit approval Applicant will demonstrate compliance with the Marion County Fire Code
7. Applicant will monitor on-site activity through the development of a sign-in protocol utilizing the proposed welcoming vestibule and will not allow any more than 500 people on the property at a given time. If the maximum number of

individuals that can be supported by the applicant's water and sewer systems established at the time of building permit approval to be fewer than 500 people, that lower threshold shall be the applicable cap on the on-site population.¹⁵

8. YWAM shall not have more than six RV parking spaces.
9. YWAM shall contribute its proportionate share to any of the following improvements implemented by the County:
 - A. Install larger (or additional) stop signs.
 - B. Install Stop Ahead pavement markings.
 - C. Install double-wide Stop bars.
 - D. Increase retro reflectivity of Stop signs.
10. Water Conservation Requirements: YWAM will develop requirements and limitations on water use to minimize the amount of groundwater consumed by residents and off-site users.
11. Water Use Monitoring Plan: A water-use monitoring plan shall be submitted to Marion County to monitor and report the water use from the proposed development. The monitoring plan shall be developed by a registered geologist or licensed professional engineer and shall include the installation of water meters on all wells used by YWAM. The plans shall be implemented before building permits are issued.
12. Well-Water Monitoring Plan: A well-water monitoring plan shall be submitted to Marion County to monitor and report the impact of water use from the proposed development. The monitoring plan shall be developed by a registered geologist or licensed professional engineer. The plan shall be implemented before building permits are issued.
13. All data gathered under these plans shall be submitted to Marion County on an approved form or in an approved electronic format on a quarterly basis

¹⁵ This condition of approval was added at YWAM's suggestion.

E. APPEAL RIGHTS

An appeal of this decision may be taken by anyone aggrieved or affected by this order. An appeal must be filed with the Marion County Clerk (555 Court St. NE, Salem, OR 97301) by 5:00 p.m. on the 16th day of July, 2021. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be refunded.

DATED at Salem, Oregon, this 30th day of June, 2021.

F. Wilson

Fred Wilson
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

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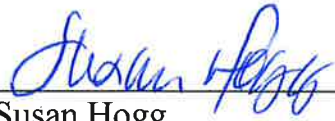
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By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 30th day of June, 2021, and that the postage thereon was prepaid.



Susan Hogg
Administrative Assistant to the
Hearings Officer