



King County

Department of Development and Environmental Services

900 Oakesdale Avenue Southwest
Renton, WA 98057-5212

206-296-6600 TTY 206-296-7217

www.metrokc.gov

REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: November 6, 2008

TO: Building Services Division Staff
Jim Chan, Manager
Chris Ricketts
Mark Bergam
Jarrod Lewis
Joelyn Higgins

Land Use Services Division Staff
Randy Sandin, Manager
Lisa Dinsmore
Deidre Andrus
Steve Bottheim
Doug Dobkins
Pesha Klein

Fire Marshal Division Staff
John Klopfenstein, Fire Marshal

Stephanie Warden, Director
Joe Miles, Deputy Director
Harry Reinert, Special Projects Manager and RRC Co-Chair
Cass Newell, Prosecuting Attorney's Office

FM: Harry Reinert, Co-Chair

Present: Via Email

1. What is the use classification under K.C.C. Chapter 21A.08 for a large tennis center facility?

Background

A potential applicant is proposing to construct a 65,000 square foot tennis center on RA zoned property in the Bear Creek basin. The proposed facility would be open to the general public with from six to nine enclosed tennis courts. The facility would also offer tennis instruction, clinics, tournaments, and summer camps. The facility will also have an instruction room, a lounge with tennis related sales, vending machines, two locker rooms, a meeting room, and two management offices.

At its July 10, 2008 meeting, the Regulatory Review Committee discussed this proposal and concluded that the facility should be considered as a park and that the provision of lessons in the park was included in that use. Part of the rationale for that decision was that K.C.C. 21A.08.040 appears to prohibit nearly all of the uses in SIC 7999 but golf driving ranges. The committee has been asked to revisit that discussion, particularly in light of the other uses included in SIC 7999.

Discussion

K.C.C. 21A.06.835 defines a park as:

Park. Park: a site designed or developed for recreational use by the public including, but not limited to:

A. Indoor facilities, such as:

1. Gymnasiums
2. Swimming pools; or
3. Activity centers;

B. Outdoor facilities, such as:

1. Playfields;
2. Fishing areas;
3. Picnic and related outdoor activity areas; or
4. Approved campgrounds;

C. Areas and trails for:

1. Hikers;
2. Equestrians;
3. Bicyclists; or
4. Off-road recreational vehicle users;

D. Recreation space areas required under K.C.C. 21A.14.180;

E. Play areas required under K.C.C. 21A.14.190; and

F. Facilities for on-site maintenance.

The relevant provisions of the definition for this discussion are that the park must be for recreational use by the public and that it may include indoor facilities, such as gymnasiums and activity centers. The proposed facility will be available for public use. It is not proposed as a private club. There is no requirement that the facility be owned by the public, just that it be available for public use for recreation. The proposed facility will include indoor courts, which are similar in nature to the types of indoor facilities specifically listed in the definition. Thus, at least with respect to the construction of the facility itself, it falls clearly within the definition of a park.

In the RA zone, parks are a permitted use, subject to conditions, such as minimum setbacks, minimum lot sizes, and lighting requirements.

A second question is whether all of the proposed activities, in particular teaching tennis lessons, are included within the park use or are covered by a separate use category.

One possible use that might apply in this circumstance is specialized instruction school, defined in K.C.C. 21A.06.1200 as:

Establishments engaged in providing specialized instruction in a designated field of study, rather than a full range of courses in unrelated areas; including, but not limited to:

- A. Art;
- B. Dance;
- C. Music;
- D. Cooking; and
- E. Driving.

The critical element of this definition is that these schools provide instruction in a "field of study." In order for tennis instruction to qualify as a specialized instruction school it would need to be considered to be a field of study similar to the items listed in K.C.C. 21A.06.1200.

Another use would be Amusement and Recreation Services, Not Elsewhere Classified. K.C.C. 21A.08.040 includes SIC 7999 as one of the listed uses. Non-membership tennis courts and sports instructional schools and camps are specifically listed under SIC 7999.

SIC 7999 is subject to Condition 14, which excludes from the category "amusement and recreational uses classified elsewhere in this chapter." In the RA zone, amusement and recreation services are allowed as a permitted use, subject to conditions 8 or 21, and as a conditional use, subject to conditions 15 and 18.

In the RA zone, the conditions that apply to amusement and recreation services are written in a rather confusing fashion. The King County Hearing Examiner commented on this confusing section in a decision on a motion for summary judgment in Snoqualmie River Soccer Camp, issued on September 28, 2006. In that decision, the Hearing Examiner noted that a literal reading of the limitations would lead to the "bizarre outcome" that the only uses allowed in that category would be golf driving ranges. The Hearing Examiner concluded that this could not be what the County Council intended and that all uses in SIC 7999 were permitted, with only the provisions governing golf driving ranges being limited.

However, SIC 7999 includes a wide array of uses that would not normally be allowed in the RA zone. For example, Gocart raceway operation and rentals, moped and motorcycle rental, and off-track betting are all included in this category. Allowing all of these uses without condition or limitation would also be a bizarre outcome. Further confusing the matter is that Condition 14 notes that SIC 7999 does not include uses classified elsewhere in K.C.C. Chapter 21A.08, but the specific uses discussed as being permitted under SIC 7999 in the RA zones include golf driving ranges, which are classified under the definition of golf facility.

As a result, the Regulatory Review Committee concludes that the literal reading of K.C.C. 21A.08.040 as it relates to Amusement and Recreation Services should be the starting point for interpreting this provision. However, the Committee suggests that the "bizarre outcome"

identified by the Hearing Examiner can be addressed through application of K.C.C. 21A.02.070D to the uses listed in SIC 7999 that K.C.C. 21A.08.040 does not specifically cover. K.C.C. 21A.02.070D authorizes the Director of DDES to determine whether a land use "not specifically listed in a land use table or specifically included in a land use table" is allowed in a zone.

As noted previously, tennis instruction schools are included in SIC 7999. Although a Tennis Center does not exactly come within the definition of a specialized instruction school, it would have impacts similar to a specialized instruction school.

In the RA zone, unless established as an accessory to a residential use, specialized instruction schools are a conditional use subject to setback and other requirements. The Regulatory Review Committee recommends that a tennis center as proposed in this case be considered similar in nature to a specialized instruction school and that it be subject to the same permitting process and conditions as if it were a specialized instruction school.

Conclusion

A tennis activity center that will be open to the public has two elements to it. The tennis facility itself is considered to be a park under K.C.C. 21A.06.835. In the RA zone, a park is a permitted use, with some conditions. Providing tennis lessons is covered by SIC 7999, amusement and recreation services. K.C.C. 21A.08.040 is confusingly written as it relates to SIC 7999 and what uses are allowed. As a result, the Regulatory Review Committee recommends that a literal interpretation of the code be followed and that the Director exercise the authority in K.C.C. 21A.04.070D to determine whether specific uses in SIC 7999 are allowed in a zone. In this case, the Committee recommends that in the RA zone, tennis lessons associated with a tennis facility be treated the same as a specialized instruction school. In the RA zone, this would mean that the tennis facility would be considered a conditional use, subject to the conditions that apply to specialized instruction schools.