King County
Department of Development and Environmental Services
900 Oakesdale Avenue Southwest
Renton, WA 98055-1219

FINAL CODE INTERPRETATION
L04CI004

Background

By letter dated November 10, 2004, Diane Conway filed a code interpretation request. The request was made on behalf of property owners (neighbors) who live in the vicinity of a parcel where the neighbors claim a "motocross track" is being operated. The property on which the motocross track is alleged to be operating is zoned A-35 and is located in the Enumclaw area on Mud Mountain Road. Although there is no indication that the owners advertise the use of their property or charge a fee for its use, the neighbors claim that the motocross race track is used by up to 15 motorcycles at a time. After an earlier complaint that there was illegal grading, DDES issued a grading permit. As part of issuing the grading permit, the property owner provided an affidavit that the track was for "private use."

The code interpretation request poses three questions:

- Is a motocross track allowed on agricultural zoned lands, given the purpose of those lands set forth in K.C.C. 21A.04.030?
- Is a motocross track a permitted use on agricultural zoned property under K.C.C. Chapter 21A.08?
- Is a motocross track a "race track" under K.C.C. 21A.08.100?

Discussion

K.C.C. 21A.04.030 sets forth the purpose of the Agriculture zone:

> A. The purpose of the agricultural zone (A) is to preserve and protect irreplaceable and limited supplies of farmland well suited to agricultural uses by their location, geological formation and chemical and organic composition and to encourage environmentally sound agricultural production. These purposes are accomplished by:
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> 1. Establishing residential density limits to retain lots sized for efficient farming;
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> 2. Allowing for uses related to agricultural production and limiting nonagricultural uses to those compatible with farming, or requiring close proximity for the support of agriculture; and

3. Allowing for residential development primarily to house farm owners, on-site agricultural employees and their respective families.

B. Use of this zone is appropriate for lands within agricultural production districts designated by the Comprehensive Plan and for other farmlands deemed appropriate for long-term protection.

K.C.C. 21A.04.020 states the use to be made of the zoning classification purpose statements.

> The purpose statements for each zone and map designation set forth in the following sections shall be used to guide the application of the zones and designations to all lands in unincorporated King County. The purpose statements also shall guide interpretation and application of land use regulations within the zones and designations, and any changes to the range of permitted uses within each zone through amendments to this title.

Therefore, the purpose statements are intended to guide the determination of appropriate uses and application of regulations to uses in each zone.

The zoning code does not define any terms that are relevant to the questions asked. The permitted use that is closest to the activity described is a racetrack, SIC 7948, which is identified as a regional land use in K.C.C. 21A.08.100. SIC 7948 falls under the commercial sport subgroup and is defined to include "promoters and participants in racing activities, including racetrack operators, operators of racing stables, jockeys, racehorse trainers, and race car owners and operators." It includes dog racing, horse racing, motorcycle racing, racetrack operation, and similar activities. The other activity listed under commercial sports are professional sports clubs and promoters and includes arenas, athletic field operation, and other similar activities. Professional sports clubs and promoters are classified as SIC 7941 and membership sports and recreation clubs are classified as SIC 7997. That latter classification includes golf, tennis, and amateur sports and recreation clubs. Miscellaneous amusement and recreations services are classified as SIC 7999.

Racetracks (SIC 7948), Sports Clubs, and Amusement and Recreation Services (SIC 7999) are not permitted uses in the A-zone. K.C.C. 21A.08.100 and 21A.08.040.

The activity described in the code interpretation request does not appear to fall within the description of a racetrack. There is not statement that the racetrack is open to general public use or that the property owners charge a fee for its use. As such, it would not be considered a "racetrack" under SIC 7948, which falls under the subcategory of commercial sports.

K.C.C. 21A.02.070 provides directions on the use of SIC classifications and how the department should address land uses not listed in the permitted use tables.

D. The Director shall determine whether a proposed land use not specifically listed in a land use table or specifically included within a SIC classification is allowed in a zone. The director's determination shall be based on

whether or not permitting the proposed use in a particular zone is consistent with the purposes of this title and the zone's purpose as set forth in K.C.C. 21A.04, by considering the following factors:

1. The physical characteristics of the use and its supporting structures, including but not limited to scale, traffic and other impacts, and hours of operation;

2. Whether or not the use complements or is compatible with other uses permitted in the zone; and

3. The SIC classification, if any, assigned to the business or other entity that will carry on the primary activities of the proposed use.

K.C.C. 21A.02.070D.

The racing activity described, although not strictly speaking a racetrack, has many of the characteristics of a commercial racetrack. If the property is used several times a week for racing purposes, the activity is likely to generate more traffic than is likely to be created by either an agricultural or residential use.

Agricultural production may create dust, noise, and other similar impacts on surrounding properties. However, those impacts are often, although not always, limited to certain periods of the year. Racing, however, is more likely to occur on a regular basis over longer periods of time. The noise impacts, in particular, are likely to be different from those caused by agricultural activities.

In addition, those portions of the property that are devoted to the track have essentially been converted from an agricultural production use. Decisions of the Central Puget Sound Growth Management Hearings Board and the Washington State Supreme Court have found that even soccer fields are incompatible with the use of land for long-term agriculture. See, e.g., *Upper Green Valley Preservation Society v. King County*, CPSGMHB Case No. 98-3-0008c; *King County V. Hearings Board*, 142 Wn.2d 543 (2000).

Therefore, following the provisions of K.C.C. 21A.04.070D, the director would determine that the type of use described in the code interpretation request would be considered the same as a racetrack for purposes of the permitted use tables in K.C.C. chapter 21A.08.

Based on this determination, the questions posed in the code interpretation request can be answered as follows:

<u>Question 1. Is a [motorcycle racing] track allowed on agricultural zoned lands, given the purpose of those lands set forth in K.C.C. 21A.04.030?</u>

No. Converting agricultural land to motorcycle racing is inconsistent with the purpose of agricultural purposes set forth in K.C.C. 21A.04.030.

Question 2. Is a [motorcycle racing] track a permitted use on agricultural zoned property under K.C.C. chapter 21A.08?

No. Under K.C.C. 21A.08.100, racetracks are not a permitted use on A-zoned property. Although the described activity does not qualify as a racetrack under SIC 7948, the described activity is sufficiently similar to a racetrack, pursuant to K.C.C. 21A.04.070D the director would determine that the described activity is subject to the same standards as a racetrack. Therefore, the motorcycle racing activity as described would not be a permitted use on agricultural zoned property.

Question 3. Is [a motorcycle racing] track [that is not open to the public and not used for other commercial purposes] a "race track" under K.C.C. 21A.08.100?

No. However, as discussed earlier in this interpretation, the director would determine that a motorcycle racing track as described would be subject to the same land use regulations as a racetrack.

Decision

A motorcycle racing track that is not open to the general public is not a racetrack for purposes of K.C.C. 21A.08.100. However, if the racing track is used on a regular basis by friends and associates of the property owner and has a significant level of activity, the racing track will be subject to the same land use regulations as if it were a racetrack under SIC 7948.

A racetrack is not consistent with the Agriculture Zone and is not a permitted use on agricultural zoned property.

One circumstance where a track used for motorcycle racing might be allowed in the Agriculture Zone would be as an accessory use to a residential use. However, the activity as described in this case exceeds the intensity and duration that would normally be allowed for an accessory use.

Appeal of Final Code Interpretations

This code interpretation does not relate to a development proposal. The party requesting the code interpretation has stated facts and assumptions that have been used to come to the conclusions in this interpretation. A different code interpretation might result under a different set of facts.

Under K.C.C. 2.100.040, if a code interpretation does not relate to a development proposal, the director shall issue a final code interpretation. For purposes of appeal, this code interpretation is the final agency action.

Stephanie Warden
Director
Development and Environmental Services

2-11-05
Date