In the Superior Court of Washington, County of Lincoln

THE GLENROSE ASSOCIATION Petitioner, SPOKANE COUTY; AND SPOKANE YOUTH SPORTS ASSOCIATION Respondents.	NO. 21-2-00023-22 **Decision**

This matter comes as an appeal of a decision by the Spokane County Hearing Examiner, under the Land Use Petition Act[1] (LUPA). Parties agree this appeal is governed by the standards set forth in RCW 36.70C.130(1).

Spokane County Zoning and Land Use Classification

Spokane County engages in comprehensive land use planning under the Growth Management Act. RCW 36.70A. The various areas of Spokane County are classified in the county zoning map under one of the following "zones": Residential, Commercial, Industrial, Resource Lands, Mineral Lands, Mixed Use and Overlay. Spokane County Zoning Code (SCZC) 14.600. These various zones are "established for the purpose of promoting orderly and efficient development of land compatible with surrounding areas and the comprehensive plan."

[1] RCW 36.70C

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SCZC 14.300.100. Each area zoned is separated into several, more specific, "zone classifications" which "establish a framework whereby development will be carried out in a manner consistent with the use and density characteristics expressed for different areas." SCZC 14.600.100. The Rural Zone, for instance, is comprised of the Rural-5, Rural Traditional, Rural Activity Center, Urban Reserve and Rural Conservation zone classifications. SCZC 14.604.250. Each of these zone classifications possesses its own unique set of characteristics, such as allowable lot size, potential for future development, or environmental concerns.

"The purpose for which land or building is arranged, designed, or intended, or for which [it] may be occupied" is defined by the SCZC as a "use." SCZC 14.300.100. Uses can take a wide array of forms, from Single-Family Dwelling, Beekeeping or Church, to Chemical Manufacturing, Airstrip or Circus. To ensure that development remains consistent throughout a zoned area, each zone is assigned a unique "matrix", which defines the uses that are permitted (P), limited (L), conditional use (CU) or not permitted (N) within that zone's various zone classifications. Given the extensive number of potential uses, every matrix does not list every use defined in the SCZC. Any use that is absent from a zone matrix is prohibited within all applicable zone classifications. SCZC 14.618.210(4). An example of this would be the "Chemical Manufacturing" use, which is entirely absent from the Rural Zone matrix. SCZC 14.618.220. Since the Chemical Manufacturing use is not included in the Rural Zone matrix, it is a non-permitted use in all of the Rural-5, Rural Traditional, Rural Activity Center, Urban Reserve and Rural Conservation zone classifications.

While the SCZC defines scores of uses, "all possible uses and variations of uses that might arise cannot reasonably be listed or categorized." SCZC 14.604.300(2). In cases where there is any question as to the classification of a proposed use, the SCZC directs that the use "shall be administratively classified by comparison with other uses defined in the matrices. If the proposed use resembles identified uses in terms of intensity and character, and is consistent

with the purpose of this code and the individual zones classification, it shall be considered as a permitted/nonpermitted use... subject to the development standards for the use it most clearly resembles." *Id.*

Factual History

The genesis of this dispute is a multi-use sports complex, proposed to be constructed by Respondent, Spokane Youth Sports Association (SYSA), a local nonprofit organization which provides sports youth activities. The complex would include several artificial turf fields, off street parking, concession stands, lighting areas, restrooms, storage facilities, a basketball court, a playground and trash enclosures.

The proposed site for this complex is within the Glenrose community, which has a zone classification of Urban Reserve, organized under the Rural zone. SCZC 14.604.250. The Rural matrix table lists Community Recreational Facilities as a permitted use in the Urban Reserve zone classification. SCZC 14.618.220. "Participant Sports and Recreation (outdoor only)" is not listed in the Rural matrix table, and is therefore not permitted in any Rural zone classifications, including Urban Reserve.

Petitioner, a non-profit corporation, comprised of residents of the Glenrose Community, requested the Spokane County Director of Building and Planning issue an Administrative Interpretation identifying whether the proposed sports field complex most closely resembles a Community Recreational Facility use or a Participant Sports and Recreation (outdoor only) use. The administrative interpretation issued by the Director determined the sports field complex most closely resembles a Community Recreational Facility and was therefore a permitted use in areas classified as Urban Reserve.[2] Petitioner appealed the Director's determination to the Spokane County Hearing Examiner.

[2] The Director's rationale is not a factor in this Court's decision.

Hearing Examiner Decision

The hearing examiner's decision began with a recitation of relevant portions of the SCZC. The hearing examiner established that SCZC 14.604.300(2) is "the standard to be employed . . . in issuing an Administrative Interpretation of the zoning code." The hearing examiner then engaged in a several-page analysis concerning the appropriate interpretation and application of SCZC 14.604.300(2). Ultimately, the hearing examiner determined that SCZC 14.604.300(2) required him to begin by comparing the proposed use with *only* those uses identified within the Rural Matrix. The hearing examiner concluded, if the proposed use resembled a use found in the relevant matrix, in terms of intensity and character, the comparison would cease and a determination should be made based on that particular use.

In implementing this interpretation of SCZC 14.604.300(2), the hearing examiner first conducted a comparison of the proposed sports facility to the Community Recreational Facility use. The result of this comparison was the hearing examiner's finding that the sports facility resembled the intensity and character of a community recreational facility, and was therefore a permitted use. Since the hearing examiner determined the sports facility resembled a use explicitly referenced in the Rural matrix, he concluded a comparison with the Participant Sports and Recreation (outdoor only) use was not necessary.

Analysis

The issue presented is, when there is a question as to the appropriate use classification, should a proposed use be compared only with those uses expressly listed in the applicable matrix table? Or must a comparison be made with *all* defined uses across all matrices? This court holds that SCZC 14.604.200(2) required the comparison of the proposed sports complex with *all* resembling uses. By comparing the proposed complex with only a single use contained in the Rural Zone matrix the hearing examiner erred. Further, the appropriate use classification is the use which the complex *most* resembles.

Application of the Qualifying Clause

The relevant portion of SCZC 14.604.300(2) begins with a "qualifying clause", which limits application of the subsection to only the following uses: "mixed uses/sites or any use not specifically mentioned or about which there is any question..." If the qualifying clause of SCZC 14.604.300(2) has been met the subsection directs, in part, that the ambiguous proposed use "shall be administratively classified by comparison with other uses identified in the matrices."

Within his decision, the hearing examiner concluded the "qualifying clause" was met and the remainder of SCZC 14.604.300(2) was applicable. Petitioner and respondent, Spokane County, agree there is at least some question as to the proper use classification of the proposed sports complex. Spokane County Brief pg 6-7. However, respondent, SYSA, contends that "the plain meaning of Community Recreation Facility" is clear and that "an alternative classification under SCZC 14.604.300 was not appropriate" because "SYSA's sport field use is a Community Recreational Facility permitted in the urban reserve (UR) zone." SYSA Brief pg 4-5. SYSA's brief therefore contends the hearing examiner's decision to conduct a classification under SCZC 14.600.300(2) was an erroneous application of the law to the facts.

Appeals based upon an erroneous application of the law to the facts are reviewed under a "clearly erroneous" standard. RCW 36.70C.130(1)(d). Such an application is clearly erroneous when the court is left with a "definite and firm conviction that a mistake has been committed." *Norway Hill Preserv. & Protec. Ass'n v. King Cty. Council*, 87. Wn.2d 267, 274 (1976).

The qualifying clause of SCZC 14.600.300(2) is met if there is *any question* as to the proper classification of a proposed use. Therefore, for this court to conclude 14.600.300(2) is inapplicable, it must be left with a "firm conviction" that there can be no question the proposed sports complex is properly classified as a Community Recreational Facility use. In making such

a determination, the court must first look to the following definition, contained in section 14.300.100 of the SCZC:

> "Community Recreational Facility - Any public or private building, structure, or area which provides amusement, relaxation, or diversion from normal activities for persons within the area in which it is located and which is not operated for profit."

The failure of SYSA's assertion that the proposed sports complex is properly classified as a Community Recreational Facility, is largely due to the ambiguous and nonspecific nature of that definition. By utilizing a broad definition and failing to provide any concrete examples of what precisely is intended by Community Recreational Facility, the SCZC has created a definition under which almost any non-profit use could be classified. Consider an individual of significant means who enjoys piloting small private aircraft. This activity provides this person with relaxation, amusement and diversion from their normal activities. The individual purchases a large empty piece of property, located in a residentially zoned area and begins taking off and landing his private aircraft upon it. Other like-minded individuals are allowed to use this area free of charge. This scenario describes a private area, which provides amusement, relaxation and diversion from normal activities, for persons within the area, and it is not operated for profit. It therefore fits within the broad definition of a Community Recreational Facility. However, any reasonable person can recognize the use just described much more closely resembles the "Airstrip, private" use, which is absent, and therefore not-permitted, in the Residential zone matrix.

If observed in isolation, the proposed sports complex may meet the definition of Community Recreational Facility. However, that definition is so broad that fitting within it proves to be an exceptionally low hurdle. When even superficially compared with other defined uses, it becomes clear that Community Recreational Facility is not the *only* reasonable use

classification for the proposed sports complex.[3] There is clearly at least *some* question as to what the proper classification should be. Therefore, the qualifying clause of SCZC 14.604.300(2) is met and the hearing examiner's further application of that section was appropriate.

Administrative Classification of Questionable Uses

The portion of the hearing examiner's decision critical to this court, in which the erroneous application of SCZC 14.604.300(2) is contained, begins on page 8. The hearing examiner erred when he concluded the following:

> "[A]dministrative classification ... begins with reference to the 'individual zone classification' of the property where the use is proposed. Then, if the proposed use resembles a use identified in the subject zone in terms of intensity and character, and is consistent with the purpose of this code and the individual zone's classification, the proposed use shall be considered as a permitted or an nonpermitted use within a general zone classification, matrix or zone."

Put another way, the hearing examiner concluded that a proposed use must *first* be compared to only those uses identified in the applicable zone matrix. If the proposed use resembles a use specifically identified within that matrix in terms of intensity and character, the hearing examiner concluded it should be classified according to that use. In doing so, the hearing examiner declined to consider whether there may be a more closely resembling use defined elsewhere in the SCZC.

When interpreting county and municipal codes, a reviewing court uses "the same rules of statutory construction ... as to the interpretation of state statutes." Sandona v. Cle Elum, 37

[3] Although others may exist, Participant Sports and Recreation (outdoor only) and Youth Camp have been advanced as other possible alternatives defined by SCZC 14.300.100.

Wn.2d 831, 836-7 (1951). "Statutory interpretation is a question of law, which [a] court reviews de novo." *W. Telepage, Inc. v. Tacoma Dep't of Financing*, 140 Wn.2d 599, 607 (2000)(citing *Enterp. Leasing, Inc. v. City of Tacoma*, 139 Wn.2d 546 (1999)). "If a statute is plain and unambiguous, its meaning must be derived from the wording of the statute itself." *State v. Keller*, 143 Wn.2d 267, 276 (2001). "Courts should assume the Legislature means exactly what it says." *Id*. "[C]ourts are not 'obliged to discern any ambiguity by imagining a variety of alternative interpretations.'" *Id* 266-7 (quoting W. *Telepage*, 140 Wn.2d at 608).

The hearing examiner's interpretation ignores the plain and unambiguous language of SCZC 14.604.300(2) when it directs that: "any use ... about which there is any question shall be administratively classified by comparison with other uses identified *in the matrices." Emphasis added*. This court safely concludes use of the plural term "matrices", as opposed to the singular "matrix", was intentional. Drafters of the SCZC must have therefore intended that administrative classification begin with a comparison of all uses identified across all zone matrices, not just those uses identified in the subject zone matrix.

Furthermore, a single provision must be considered "within the context of the regulatory and statutory scheme as a whole." *ITT Rayonier, Inc. v Dalman,* 122 Wn.2d 801, 807 (1993). The following provision is ubiquitous throughout the SCZC: "All uses not specifically authorized by this code are prohibited." See SCZC 14.606.210(4), 14.608.210(4), 14.612.210(4), 14.614.210(4), 14.616.210(4), 14.618.210(4). The justification for such a widely included provision is easily explainable. If this provision were not present, drafters of the zoning code would be required to reference *every* defined use within every zone matrix. Some uses are so obviously incompatible with a given zone that they need not even be referenced in the zone's matrix table (such as airstrips in the Residential zone.) If the hearing examiner's interpretation were to stand, it would actually encourage uses being permitted that are obviously incompatible within a specific zone. This would be the consequence of uses being compared with an overly

ambiguous permitted use, even though a much closer resembling use exists but was not included in that matrix by virtue of being obviously incompatible within the relevant zone. Such a result is not just at odds with the framework of the SCZC, it is antithetical to its entire purpose for being.

Finally, when the hearing examiner found his primary determination should be whether "the proposed use resembles a use identified in the subject zone" he read the word "most" out of section 14.604.300(2); specifically when it directs that a "classification shall be considered as a permitted/nonpermitted use... subject to the development standards of the use that it most resembles." The effects of this error in interpretation are apparent on page 12 of the hearing examiner's decision, when he concluded "[t]he Director's interpretation that the proposed sports field complex *could* resemble a Community Recreational Facility is not error." *Emphasis added.* The question the Director and Hearing Examiner were tasked with answering was not whether the proposed sports facility *could* resemble a Community Recreational Facility. The question was whether the proposed sports facility *most* resembles a Community Recreational Facility. By reading the word *most* out of the relevant passage, the Hearing Examiner answered an irrelevant question.

Parties' Requested Resolutions Other than Remand

The decision of a court reviewing a land use decision pursuant to RCW 36.70C is contained within section 140 of that chapter. In relevant part, section 140 provides that a "court may affirm or reverse the land use decision under review or remand it for modification or further proceedings."

Petitioner requests that this court reverse the hearing examiner's decision and enter findings that the proposed sports complex is a Participant Sports and Recreation (outdoor only) use. However, this court has only the authority to affirm, reverse or remand the land use

decision. The hearing examiner never decided whether the sports facility was a Participant Sports and Recreation (outdoor only), the question was avoided entirely. No authority has been provided which would allow this court to reverse the land use decision and then answer a decision which was never made at the lower level. This court sits in an appellate capacity and is therefore not properly situated to make factual findings requested by Petitioner.

Should this court find the Hearing Examiner's decision was in error, Respondent requests that this court reach beyond the hearing examiner's decision and affirm the decision issued by the Director in his Administrative Interpretation. It is the hearing examiner's decision being reviewed by this court. The decision of the Director is not under review. As just explained above, RCW 36.70C.140 does not bestow authority in this court to provide the requested relief.

Conclusion

This court finds the hearing examiner engaged in unlawful procedure and failed to follow the process prescribed in the Spokane County Zoning Code. This matter is remanded back to the Spokane County Hearing Examiner for reconsideration pursuant to the ruling of this court.

4 Apr 2025
Date

Judge