

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MAGNOLIA COMMUNITY CLUB

FILE NO. S-82-009

from an interpretation of the Director,
Department of Construction and Land Use

Introduction

Magnolia Community Club, appellant, appeals an interpretation by the Director of the Department of Construction and Land Use regarding the sale of liquor at the Daybreak Star Center at Discovery Park.

Parties to the proceedings were: appellant by Linda R. Larson and Otto G. Klein, III, Syrdal, Daniels, Klein and Myre; the Director of the Department of Construction and Land Use (Director) by Gordon Crandall, Assistant City Attorney, United Indians of All Tribes by Peter Schneurman.

This matter was heard before the Hearing Examiner on January 5, 1983. Post-hearing briefs were accepted until January 19, 1983.

After due consideration of the evidence elicited during the public hearing, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Magnolia Community Club requested an interpretation by the Director of the Land Use Code as to whether the sale of liquor under a Class L liquor license is permitted within Discovery Park.

2. The Director determined that "the sale of liquor pursuant to a Class L Liquor License is customarily incidental to the cultural activities at the Daybreak Star Center within Discovery Park, and therefore is an accessory use permitted outright."

3. The Daybreak Star Center is on a two plus acre site leased by the City to the United Indians of All Tribes Foundation (United Indians). The lease of the site to United Indians grew out of competing applications for the surplus federal property and is for a period of 99 years with the option of successive 99 year renewals.

4. United Indians operates a dinner theatre within the Daybreak Star Center which is an Indian cultural center. The dinner includes salmon and other Indian foods and is followed by an Indian cultural entertainment program.

5. The dinner theater has operated for two years, is open to the public by reservation and has been offered approximately twice per month.

6. For some time wine has been served with the dinners pursuant to banquet licenses.

7. United Indians has obtained a class L liquor license. The class L license may be issued "to any nonprofit arts organization which sponsors productions or performances of an artistic or cultural nature in a specific theater or other appropriate designated indoor premises approved by the board." RCW 66.24.495.

8. Discovery Park is located in a SF 7200 zone.

9. Public parks are permitted outright as principal uses in the SF 7200 zone. Section 23.44.06, Seattle Municipal Code.

10. Section 23.84.30"P" defines "park" as:

Public open space, and associated structures, permanently dedicated to recreational, aesthetic, educational or cultural use and generally characterized by its natural and landscaped features.

11. The general use provisions of the Land Use Code state, regarding accessory use:

Except when specifically stated, permitted uses accessory to principal uses permitted outright, shall be permitted outright....The Director shall determine whether uses not listed as accessory uses are customarily incidental to a principal use.... Section 23.42.20, Seattle Municipal Code.

12. Section 23.44.60 sets forth uses accessory to parks and playgrounds. Those provisions relating to the sale of liquor are:

A. The following accessory uses shall be permitted in any park when within a structure or on a terrace abutting the structure:

1. The sale and consumption of beer during daylight hours;
2. The sale and consumption of alcoholic beverages under a Class H liquor license at municipal golf courses during established hours of operation. When a use is within one hundred feet from any lot in a residential zone the use shall be completely enclosed.

B. The sale and consumption of beer and wine with meals served in a restaurant facility within the boundaries of Woodland Park shall be permitted. The use shall be permitted in only one facility located no closer than one hundred feet from any lot in a residential zone and separated from other public activity areas and zoo buildings by at least fifty feet.

13. An additional subsection provides:

C. Storage structures and areas and other structures and activities customarily associated with parks and playgrounds are subject to the following development standards in addition to the general development standards for accessory uses:

1. Any active play area shall be located thirty feet or more from any lot in a single family zone.
2. Garages and service or storage areas shall be screened from view from abutting lots in residential zones. Section 23.44.60.

14. The Superintendent of the Department of Parks and Recreation regularly approves the applications for banquet permits to sell alcoholic beverages in parks such as in Volunteer Park at the Seattle Arts Museum and at the Bathhouse Theater at Greenlake.


Conclusions

1. The Hearing Examiner has jurisdiction, pursuant to Chapter 23.88, to review the Director's interpretation of the Land Use Code as it applies to the subject property. The Director's interpretation, or that of the Department of Parks and Recreation, of the lease agreement between United Indians and the City is not subject to hearing examiner review.
2. The parties' differing interpretations of the Land Use Code and its application to this case is understandable in that the Code provisions readily lend themselves to two different readings and resist easy application of the usual rules of construction. On the one hand we know from Section 23.42.20 that uses accessory to principal uses permitted outright are also permitted outright. Since a park is permitted in a single family zone outright any accessory use to that park, i.e., one that is incidental, is also permitted outright. When the accessory use is not specifically mentioned, the Director is to determine whether it is customarily incidental to the principal use. Here, under the Director's reading, since the sale of alcoholic beverages under a Class L license at Discovery Park is not listed as an accessory use, he is to decide if it is customarily incidental to the park use and has decided that it is.
3. Appellant urges that since the sale and consumption of alcohol in parks has been dealt with specifically in Section 23.44.60 for certain parks, those should be treated as exceptions to an implied, general prohibition against the sale of alcohol in parks. Therefore, the maximum "expressio unius est exclusio alterius" should apply and those uses not specifically listed should be excluded. The Director's argument is that the rule should not be applied to defeat the intent of the Council which, he urges, is to confirm existing permission and impose limitations.
4. The cases cited by the parties which have utilized the expressio unius maxim in construing the statutes before the court have all dealt with situations where there was no question that the specified items were exceptions. There the rule was applied. Here the issue is whether the listed items or categories are exceptions. The language of Section 23.44.60 provides no support for the argument that they are. They can be read as exceptions only if we presume a general prohibition on the sale of alcohol in parks rather than permission for any accessory use. Such a prohibition cannot be presumed following the rule that zoning or licenses are in derogation of the common law right to use property and should be read as narrowly as possible while still accomplishing their purpose.
5. The purpose of the specific provisions of Section 23.44.60 either must be to place restrictions on activities otherwise permitted as accessory uses or to permit uses which would not be considered customarily incidental to the park use. Since restrictions are placed on the activities in both A and B, it is not possible, without more to know if those activities are also listed because they are not customarily incidental to park use. Subsection C, not related to sale of alcohol, does provide development standards, or restrictions, giving support to the reading that A and B are merely restricting uses otherwise permitted.
6. Under the foregoing interpretation, all other sales of alcohol would be permitted if customarily incidental to park use. The testimony of the Superintendent of Parks and Recreation showed sales of alcoholic beverages in some park settings to be quite common. The Director determined that the use proposed here would be customarily incidental to the park dinner theater use. That determination is entitled to substantial weight and was not shown clearly to be in error. The interpretation, therefore, must be affirmed.

Decision

The determination of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 2nd day of February, 1983.


M. Margaret Klockars
Deputy Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App 418 (1977); JCR 73 (1981). Should an appeal be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.