INTERPRETATION OF THE DIRECTOR
UNDER SEATTLE MUNICIPAL CODE TITLE 23

Regarding the Use of the	
Property at	**DPD Interpretation No. 08-008**
5500 Phinney Avenue North	**(Project No. 3009779)**
(Woodland Park Zoo)	

BACKGROUND

This interpretation was requested by the Woodland Park Zoological Society, to address issues relating to the proposed "West Entry" improvements at the Zoo (Project No. 3009221).

FINDINGS OF FACT

1. The Woodland Park Zoo is located on a City-owned property, approximately 91 acres in area, bounded by Phinney and Aurora Avenues North and North 50th and 59th Streets. The property is in an SF 5000 zone. The Zoo has been in operation on portions of this property since 1899. Under an agreement with the City, the Woodland Park Zoological Society (sometimes referred to herein as the "Zoo" or the "Zoo Society") is responsible for operation and development of the Zoo.

2. The Zoo applied for a master use permit for construction of certain improvements, collectively referred to as the "West Entry." These include a "ticketing/member services pavilion" including an open but covered structure with turnstiles, a 126-square-foot ticketing supervisor's office, a 161-square-foot membership office, and restrooms. In addition, the West Entry would include a store with approximately 2,500 square feet of retail space, 1,113 square feet of associated storage and attached public restrooms with an area of 1,323 square feet. Finally, a Visitor Assistance Building is proposed with approximately 935 square feet of floor area, including a first aid room and approximately 330 square feet devoted to stroller storage. A covered area adjacent to this building would be used for washing strollers. A portion of the store building would be 18'10" tall; these

buildings would otherwise be one-story flat-roofed buildings with a height of 12'4". The closest of the proposed facilities would be located approximately 250 feet from Phinney Avenue North, at a grade ten feet lower than that of the nearby street, and obscured from view from the street by vegetation.

3. The proposed zoo store would have an entry facing the West Entry plaza. It would not be necessary to pay admission to the zoo in order to go to the zoo store. The entry to the zoo store, as proposed, is approximately 370 feet from Phinney Avenue North, the nearest street. The walking distance would be somewhat more, as the path meanders.

4. A Long-Range Physical Development Plan ("LRPDP") for the zoo was developed in 2002, and adopted by the City Council in 2004 by Resolution 30701. Although the LRPDP did not include detailed, dimensioned plans, the drawings depicted a zoo store and ticketing structure at the west entry. (See LRPDP pages 72 and 73.) The suggested elements of the west entry, listed at Page 66, include "entry plaza and landscape, retail/gift, ticketing and membership, visitor services, information, security/lost and found, restrooms." The proposed west entry is described again, in part, at Page 72:

> The new West Entry would incorporate ticketing and admissions, public restrooms, zoo store, first aid station and stroller rental. The design will allow family leaders to queue for tickets while other family members review orientation materials and program schedules or purchase items such as film or rent strollers. The group will pass through a control point where tickets are taken. The area will be enlivened with attractive plantings and other features to add character and color.

5. The request for interpretation included three attachments, which are attached to this interpretation as well, and incorporated as findings of fact: Attachment 1 is a list of 15 Seattle parks, including the Woodland Park Zoo, which include retail stores. Attachment 2 is a sampling of 18 zoos in the United States and Canada, and the number of stores they provide in permanent buildings. Based on the representations of the Zoo Society, the identified zoos are comparable to the Woodland Park Zoo, based on physical size, level of accreditation and number of visitors. Attachment 3 reflects a survey of the same 18 zoos, and whether they include entry plazas, ticketing, membership and guest services facilities. The attachment represents that they all include all of these sorts of facilities, with a note that one of the zoos offers free admission (and presumably does not require a ticketing facility) while another offers free admission generally, but has certain ticketed attractions.

6. The Woodland Park Zoo has an existing store near its South entry which it proposes to keep. That store has an area of approximately 3,210 square feet of retail space and 2,160 square feet of associated storage space, according to information provided by the Zoo. The combined area of the new and existing stores, excluding storage areas, would be a bit over 5700 square feet. At the Department's request, the Zoo Society has provided details about the sizes of the

stores in most of the other zoos it had previously surveyed. Most of the zoos had total retail areas falling in the range between 3,500 and 7,000 square feet, although at least one, San Diego Zoo, has retail areas totaling over 19,000 square feet. This information is attached and incorporated into these findings. (See Attachment 4.) (This page lists the area of the existing store at Woodland Park zoo as 5,370 square feet, which includes storage space not actively used for retail purposes. It is not clear whether the areas listed for stores in other zoos include storage spaces. The combined areas of the existing and proposed stores at Woodland Park Zoo, together with associated storage spaces, total approximately 9,000 square feet.)

7. The Zoo Society also has provided a list of the categories of merchandise sold at Woodland Park Zoo's current zoo store. This interpretation is based on an assumption that the proposed new store would carry similar merchandise. A copy of that list also is attached and incorporated into these findings. (See Attachment 5.)

8. Among uses permitted outright in single-family zones, Seattle Municipal Code Section 23.44.006 C lists "parks and open space, including customary buildings and activities, provided that garages and service or storage areas accessory to parks are located 100 feet or more from any other lot in a residential zone and are obscured from view from each such lot."

9. SMC Section 23.42.020 A provides:

> Any accessory use not permitted by Title 23, either expressly or by the Director, shall be prohibited. The Director shall determine whether any accessory use on the lot is incidental to the principal use on the same lot, and shall also determine whether uses not listed as accessory uses are customarily incidental to a principal use.
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> Unless Title 23 expressly permits an accessory use as a principal use, a use permitted only as an accessory use shall not be permitted as a principal use.

10. "Use, accessory" is defined at SMC Section 23.84A.040 as "a use that is incidental to a principal use." "Use, principal" is defined in that section as "a use that is not incidental to another use." "Principal structure" is defined at Section 23.84A.030 as "the structure housing one or more principal uses as distinguished from any separate structures housing accessory uses."

11. As provided in SMC Section 23.44.010 C, the maximum permitted lot coverage for a lot greater than 5,000 square feet in a single-family zone is 35 percent of the area of the lot.

12. The definitions of "front yard," "rear yard" and "side yard" are all found at SMC Section 23.84A.046. The definition for "setback" is at SMC Section 23.84A.036. Measurement techniques for determining lot coverage and yards are found at

Sections 23.86.008 and 23.86.010. These definitions and measurement techniques are all based on lot lines.

13. Two previous interpretations have been prepared regarding whether proposed improvements at the Zoo were permissible under the applicable zoning, and in particular, whether they could be considered "customary buildings" and "customarily accessory uses" in a zoo and park. The first one, Interpretation No. 04-004, related to a proposed office building, a carousel and an events center. The second one, No. 07-009, related to a proposed parking garage. On appeal, the Hearing Examiner upheld the first (See Hearing Examiner File No. S-04-002) and reversed the second one in an order on a motion for summary judgment (See Hearing Examiner File No. MUP-07-022(W)/W-06-003.) To the extent that they bear on the current interpretation, the findings and conclusions in these previous Hearing Examiner decisions are incorporated into this interpretation.

14. In Interpretation 04-004, the Department concluded that a proposed carousel, and the 5600-square-foot building designed to house it, was permissible as a use and structure accessory to the established park use at Woodland Park Zoo. An office structure with 40,600 square feet of floor area also was deemed a legitimate accessory use and structure, provided that the offices were to be devoted to administering the operations of Woodland Park Zoo, and not uses at other sites. A proposed "events center," to be used for Zoo-sponsored events and programs and also made available on a rental basis for workshops, weddings and other social gatherings and programs, was deemed to be a community center, requiring administrative conditional use approval. Although the events center would generate revenue, it was not considered to be an illegal commercial use in the zone, as it was operated by a nonprofit organization for civic or recreational purposes, consistent with the definition of "community center." This interpretation was affirmed by the Hearing Examiner. (Hearing Examiner File No. S-04-002.)

15. In Interpretation No. 07-009, the Department concluded that a proposed parking garage was permissible as a use and structure accessory to the zoo and park. The Hearing Examiner reversed that decision, as it had not been documented that parking, in the form of a garage, was customarily found in zoos and parks. The Hearing Examiner applied a two-part test: First it must be determined whether the proposed feature is "customary", i.e. a common feature, and second, whether it is incidental, which involves consideration of the size, bulk, scale and intensity of the proposed accessory use/structure relative to the principal use.

16. In an appeal under the Land Use Petition Act, *Ragen v. ILU, LLC*, King County Superior Court Case No. 07-2-33692-3, Judge Susan Craighead was asked to determine whether DPD had erred in approving a proposed a 1,288-square-foot "accessory day use structure" for the use of 8 - 10 household staff on a 100,000-square-foot lot in a single-family zone. The judge looked to Section 23.42.020 A, under which the Department is responsible for determining whether uses not

specifically listed as accessory are "customarily incidental" to a principal use. The judge drew a distinction between "customari**ly** incidental" and "customary **and** incidental." Under her reasoning, a facility need not be typical, or "customary", in order to be "customarily incidental." Rather, as we understand her reasoning, a facility might be customarily incidental to a particular use if there is a logical relationship between the two such that it would not seem odd to find such a facility in conjunction with that principal use, even if the practice of providing such a facility for that use is not widespread. The judge specifically stated that she was applying a different analysis than had been applied by the Hearing Examiner in the case of the appeal regarding the Zoo's parking garage, however, she noted that she was analyzing a different code provision, in a different context. A copy of the Superior Court decision is appended as Attachment 6.

CONCLUSIONS

1. Under Section 23.44.006, parks and open space uses, *including customary buildings and activities,* are permitted outright in single family zones. Absent the express language "including customary buildings and activities" we would assume that uses accessory to parks are permitted on the same basis as uses accessory to any other permitted use, i.e., that a use may be allowed as a legitimate accessory use if the Director finds that it is "customarily incidental" to a park. We would be inclined to read this as the court did, and conclude that a use need not be commonplace in order for it to qualify as customarily incidental. On that basis, a use such as a rock-climbing wall, an archery range or a skate-boarding facility might be authorized in a park because this sort of recreational facility would not be unexpected in a public park, even if it has not been demonstrated that these exact facilities have already been provided in other parks, in Seattle or elsewhere.

2. As was resolved in Interpretation 04-004 and the ensuing appeal, it is not unusual for zoos to be located in public parks, and a zoo in a park in Seattle may provide uses and structures that have been "customary" in zoos in other cities. Moreover, as was also resolved in the previous interpretation with respect to the office building, in determining whether the scale of a proposed facility is permissible in a park, the Department may reasonably take into consideration the size of the park where is to be located. Thus, a 40,000-square-foot office building to be used for operation of the park and zoo, while it would have been out of place in many smaller parks in Seattle, was regarded as a permissible accessory use in this 91-acre park and zoo.

3. A representative of the Phinney Ridge Community Council has argued that the correct standard for deciding whether a particular type of building is customary and permissible in a park is whether it is customarily found in other parks in Seattle. By this standard, most of the facilities at Woodland Park Zoo would not

be permissible under the current zoning: No other park in Seattle has an elephant barn or a primate house. In Interpretation No. 04-004, we looked to the zoos in other cities to determine what sorts of facilities are normally provided. The Land Use Code, in allowing "customary buildings and activities" in parks in Single Family zones, does not narrowly limit buildings and activities to those generally found in parks of all types and sizes, in Seattle. Rather, in considering what facilities should be allowed in a large park which is a zoo, we conclude that it makes sense to consider whether comparable zoos in other cities provide comparable facilities.

4. As documented by the Zoo Society, the features proposed at the West Entry – a ticketing/member services pavilion, a visitor assistance building and a zoo store – are not uncommon in zoos in other U.S. and Canadian cities. In fact, the Woodland Park Zoo itself already includes such facilities. Ticketing facilities are necessary for the operation of zoos that charge admission, as most do. It would be irresponsible *not* to provide visitor assistance facilities, to offer lost child services and first aid, at a zoo that attracts over a million visitors each year, including many families with children.

5. Based on the Zoo's research, it appears that virtually all major zoos include at least one zoo store, and 12 of the 17 zoos contacted have more than one store. In its request for interpretation, the Zoo notes that retail facilities are not limited to zoos, but are also found in other parks in Seattle as well, including the aquarium and the conservatory and Asian Art Museum at Volunteer Park.

6. The Phinney Ridge Community Council has asked at what point an accumulation of zoo stores would become un-customary. A Land Use Code interpretation reflects a determination based on a specific set of facts and a specific property. To attempt to define a specific upper limit would, in effect, be to create a development standard out of thin air. This goes beyond what may be done as a matter of interpretation. However, in the Department's judgment, the size and number of zoo stores existing and proposed at Woodland Park Zoo is well within what may be allowed as customary, considering the size of Woodland Park Zoo, and in comparison to what is offered at other, comparable zoos.

7. In the Hearing Examiner's Order with respect to the proposed parking garage, the Hearing Examiner says that a two-part analysis must be applied: First, is the proposed facility "customary" and second, is it "incidental"? In addition to determining that the proposed West Entry facilities qualify as customary, we must consider whether the zoo store, in particular, may be regarded as incidental, or whether it must be regarded as a separate, principal commercial use, not permitted in the zone.

8. When considering whether a facility qualifies as incidental to a principal use on a lot, rather than a separate principal use, the Department historically has considered both the relative sizes of the uses, and also their functional

relationship. We believe the store, as currently proposed, would clearly be incidental to the Zoo, and thus would not be considered a separate principal use. This conclusion is based on the size of the store as compared to the size of the zoo, the location and orientation of the store with respect to the zoo and the street, and the nature of the merchandise proposed to be sold at the store.

9. Under the current proposal, the store would have an entrance facing the entry plaza, and also an entrance beyond the admissions gate. As stated in the Long-Range Plan, this arrangement would allow some family members to wait in line for tickets while others purchase items such as film, or rent strollers in preparation for their visit. The proposed entry plaza would be downhill from the adjacent street, and screened by landscaping. The entrance to the zoo store, itself, would be about 370 feet from the street. It would not be a retail presence on the street. As stated by the Zoo's representative, it would offer a range of merchandise relating to the Zoo's mission, and reflecting the visitor's experience. Although it is conceivable that on occasion someone might go to the store without visiting the zoo, and buy a product there without having any intention of using it at the zoo or as a memento of their zoo experience, we believe this sort of activity would be uncommon. Based on the nature of the proposed store and its merchandise, and its incorporation into the entry plaza, screened and separated from the street, we conclude that the vast majority of visitors to the store will be there for Zoo-related purposes.

10. A shopper's use of the store may reasonably be regarded as Zoo-related even in some cases where that shopper does not pay admission and visit the rest of the Zoo during that visit. For example, if the individual sees an item in the store during a visit to the Zoo, and returns later to purchase it as a gift, or if the individual is a school teacher picking up educational materials relating to zoo animals, we believe these activities may fairly be regarded as "incidental" to the zoo use.

11. The fact that a facility, supposedly accessory to a principal use on a site, might occasionally be used in a way that is not accessory to that principal use, would not lead the Department to deny permits for the facility. If a dinner guest at a house parks a car in a nearby school's accessory parking lot, or a homeowner allows a neighbor to store a bike in the owner's garage, this behavior technically would deviate from the authorized purpose of that parking lot or garage, but it would be minimal, and we believe that such minor infractions are commonplace and harmless. Likewise, it is conceivable that an occasional passer-by, with no interest in the zoo, might stop in the store to buy a product such as a roll of film or a package of mints. This sort of minor, occasional use doesn't invalidate the over-all predominant use of the facility as a retail use accessory to the zoo. The possibility that the proposed zoo store would be treated as a separate retail outlet, unrelated to the zoo, is speculative, and the likelihood that this would occur on a regular basis seems small based on the physical and visual separation from neighboring uses and from the street.

12. There is even less of a question whether the proposed ticketing facilities and visitor support services would qualify as incidental to the zoo. These facilities play a direct role in the operations of the zoo, and would be pointless as stand-alone uses.

13. We conclude that the proposed gift shop and ticketing and visitor assistance facilities proposed at the West Entry qualify as "customary structures," as that term was construed under the previous interpretation relating to the carousel and office building, given that facilities of this nature are commonplace in comparable zoos. We also conclude that these facilities, by their design, location and nature, are to be provided expressly in support of the function of the site as a zoo, and must be regarded as incidental to the zoo use.

14. The Phinney Ridge Community Council raised a separate question that the Zoo Society agreed could be addressed in this interpretation: Is the park occupied by the zoo considered a single, large lot, for purposes of determining compliance with development standards such as lot coverage limits? The Hearing Examiner addressed this same question four years ago, in considering the appeal relating to the office building. See Hearing Examiner File No. S-04-002, Conclusion 12, which states in part: "Neither the Code nor other facts presented here show that the Director should have used any reference other than the park site and the Zoo as a whole, in the analysis of the proposed uses." Development standards of the Land Use Code are applied based on recognized building sites and established lot lines. We continue to see no basis for applying these standards based on anything other than the entire property.

DECISION

The Zoo's West Entry facilities, as proposed under Project No. 3009221, including the ticketing/member services pavilion, the visitor assistance building, the zoo store and associated storage spaces and restrooms, qualify as "customary buildings" permitted in the park pursuant to Section 23.44.006 C. These facilities, as proposed, would be accessory, or incidental, to the use of the property as a park and zoo. Development standards for the zoo, including but not limited to the lot coverage limit, are to be applied based on the dimensions of the entire 91-acre park.

Entered this 11th day of December, 2008.

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Andrew S. McKim
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