

**CITY OF KIRKLAND  
HEARING EXAMINER FINDINGS,  
CONCLUSIONS, AND DECISION AND ORDER**

In the Matter of the Notice of Civil  
Violation Issued To

File Number:  
**ENF11-088**

**NORTHWEST UNIVERSITY**

By the City of Kirkland, Department of  
Planning and Community Development

**Introduction**

The City issued a Notice of Civil Violation to Northwest University for violation of a Change of Use Permit issued to the University under file number ZON08-00020.

The matter was heard by the undersigned Hearing Examiner on August 18, 2011, in City Council Chambers, City Hall, 123 Fifth Avenue, Kirkland, Washington. Northwest University was represented by Charles A. Klinge, attorney-at-law; and the Department of Planning and Community Development (Department) was represented by Judd Tuberg, Code Enforcement Officer, and Oskar Rey, Assistant City Attorney. Exhibit A, the Department's Final Witness and Exhibit List and attached exhibits was entered into the record with the following changes: attached Exhibits 5 and 12A were stricken; a certified transcript of the hearing held on the Change of Use Permit in file ZON08-00020 on February 23, 2009 was substituted for the uncertified transcript included in attached Exhibit 4; and a signed copy of the Hearing Examiner's decision in ZON08-00020 was substituted for the unsigned copy included in attached Exhibit 2. Exhibit B, the Notice of Civil Violation issued on July 6, 2011, and Exhibit C, the Department's report, were also entered into the record.

Having considered the evidence in the record and visited the site, the Hearing Examiner enters the following findings of fact, conclusions, and decision and order on the Notice of Civil Violation.

**Findings of Fact**

1. The subject property is addressed as 11220 NE 53rd Street in Kirkland. It is the site of the former Seahawks practice facility and includes two grass practice fields and one AstroTurf practice field with a pneumatic seasonal cover ("the bubble"), in addition to several structures.

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2. The Seahawks terminated their lease of the site, and in 2009, Northwest University applied for a Change of Use Zoning Permit pursuant to Kirkland Zoning Code (KZC) Section 60.12.010 to use the site. The Hearing Examiner recommended approval of the application subject to three conditions, Exhibit 2, and the Examiner's findings, conclusion and recommendation were adopted by the City Council. Exhibit 1. The permit granted the University's request to, *inter alia*, use the former practice fields "for the exclusive use of Northwest University athletic practices and intramural activities" Exhibit 2 at 11<sup>1</sup> (Change of Use Application, "*Practice Field Utilization*"). In Finding of Fact 1.c under "History," the Examiner's recommendation of approval incorporates the University's statement of its request by reference. Exhibit 2 at 14.<sup>2</sup>

3. A 30-foot wide landscape buffer separates the practice fields from an adjacent single-family residential area to the north.

4. Northwest University, a Christian university, considers sports both a crucial part of education and a way of worship. Consequently, athletics are an important part of the University's mission.

5. During the years when the Seahawks were utilizing the fields, Northwest University was frequently allowed to use them on weekends for its athletic practices and intramural activities.

6. It is a common practice for small college athletic programs to invite middle- and high-school-age athletic teams to their college campuses to work out with college coaches. The colleges, including Northwest University, consider this a form of recruiting for both the college and the college's athletic program. Northwest University's athletic program has engaged in this practice for years, using its own facilities for some sports, but using Lake Washington School District facilities for soccer.

7. The University has also operated youth sports camps for years, but has not had the facilities to offer a youth soccer camp.

8. Pursuant to its Master Plan, the University maintains an open campus, meaning that pedestrians from the neighborhood are allowed to travel through University grounds. The University also allows occasional, informal use of the fields by those living in the neighborhood.

9. Beginning in early 2010, neighbors of Northwest University began documenting incidents involving use of the Northwest University fields for purposes other than Northwest University athletic practices and intramural activities. *See* Exhibits 6 and 11a.

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<sup>1</sup> The page numbers cited for exhibits are the sequential page numbers for the entire Exhibit A that are found in the lower right hand corner of each page.

<sup>2</sup> A separate finding of fact notes that use of the pneumatic cover would also be "exclusively for Northwest University athletic practices and intramural activities." Exhibit 2 at 17.

These uses included rental of the fields to Kirkland Youth Lacrosse for extended practices and games as well as youth soccer sports camps and clinics. *Id.*

10. During April and May of 2010, Department staff investigated neighbors' complaints about these uses and issued two Notices of Violation and Orders to Correct to Northwest University. The University agreed that under the Change of Use Zoning Permit, it could not rent the fields to outside organizations. It paid the penalty associated with the violation cited in one Notice and has not rented the fields since that time. The Notice of Violation issued for the sports camps was not appealed, but the University did not institute the required corrective action either. Instead it held youth soccer camps on the fields on several additional dates in August of 2010 and failed to pay the fines levied for the violations despite receiving a demand letter for them.

11. During April, May and June of 2011, Department staff received numerous complaints about frequent, sometimes extended soccer practices and games that were not Northwest University athletic practices or intramural activities. Exhibit 8. Working with neighbors, the Department was able to document specific dates and times of these field uses. Specifically, the fields were being used for practice and games by the Cedar Park High School Soccer Team, the Under 17 girls soccer team and the Crossfire girls soccer team. *See* Exhibit 10a. After contacting the University, Exhibit 10b, the Department determined that these field uses violated the Change of Use Zoning Permit.

12. On June 17, 2011, the Department issued a Notice of Civil Violation to Northwest University for violation of the Change of Use Zoning Permit. Following a request for clarification, the Department issued a new Notice of Civil Violation on July 6, 2011. Exhibit 8 at 193 and Exhibit B. The July 6, 2011 Notice lists violations of the Change of Use Zoning Permit, KZC 60.12.010 (Special Regulation 3.d.4), and the Northwest University Master Plan, on seven specific dates in June of 2011 by allowing use of the former Seahawk fields "by teams and persons not enrolled at or otherwise affiliated with" the University. The Notice states that the Department requested voluntary compliance of the University on May 20, 2010, and that the required corrective action is to discontinue use of the practice fields for uses other than the exclusive use by Northwest University practices and intramural activities unless the University first obtains the zoning approval required by KZC 60.12.010 to do so. *Id.* The Notice states that it is for a first violation subject to a \$100 per day penalty. *Id.*

13. Following issuance of the Notice of Civil Violation, the University held numerous sports camps. These camps required payment of the fee to attend and had been advertised to the public in April. *See* Exhibit 9 at 197, 195-96. Code Enforcement Officer Judd Tuberg, testified that violations occurred on a nine specific dates between July 6, 2011 and August 12, 2011.

14. At hearing, the Department asked that the Examiner impose a daily monetary penalty for the nine violation dates between July 6, and August 12, 2011, and for any additional violations that may occur in the future. *See* Exhibit C.

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15. KZC 60.12.010, Special Regulation 3.d.4, requires an application for a Process IIB zoning permit for a change in any part of the former Seahawks facility to a use other than a professional football team office and practice facility.

16. Under the Kirkland Municipal Code (KMC), a "violation" is "an act or omission contrary to a city development regulation". KMC 1.12.020.M. A "regulation" includes the "terms and conditions of any permit or approval issued by the city ...." KMC 1.12.020.K.8.

17. A "Civil violation" is defined as "a violation for which a monetary penalty may be imposed as specified in this chapter. Each day or portion of a day during which a violation occurs or exists is a separate violation." KMC 1.12.020.D.

18. A "Repeat violation" is a "violation of the same regulation in any location by the same person for which voluntary compliance previously has been sought within two years or a notice of civil violation has been issued within two years." KMC 1.12.020.L.

### Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to KMC 1.12.050.
2. KMC 1.12.050.C states that the Department has the burden of proving "by a preponderance of the evidence that a violation has occurred and that the required corrective action, if applicable, is reasonable." The Examiner is required to accord substantial weight to the Department's determination concerning the need for corrective action. *Id.*
3. Northwest University does not dispute the activities cited by the Department as violations of the Change of Use Zoning Permit. Rather, it questions whether those activities violated the Permit.
4. Although the University argues that the decision granting the Change of Use Zoning Permit failed to include a condition requiring that the University use the former Seahawk fields for the exclusive use of its athletic practices and intramural activities, such a condition was not necessary. The decision followed the normal procedure of granting the permit for which the University had applied, and imposing as conditions any necessary restrictions not already included in the proposal described in the application. Development proposals are often very lengthy. The University cites no authority for the proposition that the City must incorporate the entire proposal into the decision granting the application.
5. The University contends that even if the use of the fields is limited to that described in its application, i.e., exclusively for Northwest University athletic practices and intramural activities, the use of the fields on all seven dates cited in the Notice of Civil Violation was for recruiting activities by the University's athletic program for men's and women's soccer. However, the University's interpretation of its application for the Change of Use

Zoning Permit effectively adds language that was not included in the application. The application was not for practice fields to be used for the exclusive use of "athletic practices sponsored by the Northwest University athletic program or athletic department," or "athletic practices conducted at the invitation of Northwest University". If the University, and by extension the City, had intended such extensive use of the fields, they could have used language that would allow it. Instead, the University used the words, "exclusively for Northwest University athletic practices". These are not words of art. The Examiner concludes that the common understanding of this phrase would be sports practices by those affiliated with the University.

6. To be "affiliated" means to be "closely associated with another typically in a dependent or subordinate position". Merriam-Webster Online Dictionary. Those affiliated with a university would normally fall into four general categories: students, faculty, administration, and other employees.

7. The evidence in the record shows that none of the groups using the fields on the seven dates specified in the Notice of Civil Violation were affiliated with Northwest University. The fact that the coach for one of the youth soccer organizations was also a coach at Northwest University does not change this conclusion because the youth organization was not itself affiliated with the University.

8. The University may pursue its mission and engage in the recruiting activities it employed prior to 2009. However, it may not expand the use of the former Seahawks fields beyond that allowed in the existing Change of Use Zoning Permit without first obtaining a new Process IIB permit. The Department's request for corrective action is reasonable.

9. KMC 1.12.040.E provides that the monetary penalty for a first violation is \$100 per day, and that the Examiner may double the monetary penalty if the violation is a repeat violation.

10. In determining the amount of the penalty, the Examiner is to consider whether the person "responded to staff attempts to contact the person and cooperated with efforts to correct the violation," "failed to appear at the hearing," "showed due diligence and/or substantial progress in correcting the violation," as well as "whether the violation was a repeat violation," "whether a genuine code interpretation issue exists," and "any other relevant factors". KMC 1.12.050.D.4.

11. One of the Notices of Violation issued to Northwest University in 2010 was expressly for renting the fields to the Kirkland Youth Lacrosse organization. However, the other Notice of Violation was for use of the fields for sports camps and other outdoor sports-related activities "sponsored or conducted" by independent contractors or outside promoters. Therefore, the Notice of Civil Violation issued on July 6, 2011 for similar activities was a repeat violation.

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12. Northwest University did not cooperate with efforts to correct the violations cited in the July 6, 2011 Notice of Civil Violation but, instead, conducted activities similar to those cited in the Notice for approximately 2 months after the Notice was issued. On the other hand, the University raised at least an arguable issue concerning the appropriate interpretation of the field use language in its application for the Change of Use Zoning Permit. Therefore, rather than doubling the \$100 per day penalty for the repeat violation, the Examiner will increase it by one-half, to \$150 per day.

13. The Examiner finds no authority in the Code for imposing penalties for uses of the field on dates not specified in the July 6, 2011 Notice of Civil Violation. In the usual land use violation case, the monetary penalty called for in KMC 1.12.040.E is imposed for each day the condition constituting the violation continues. However, in this case, the violation is an intermittent, rather than a continuing one, occurring only on the dates the fields are actually used in violation of the Change of Use Zoning Permit. Therefore, the actual dates of violation must be specified in the Notice.

14. Imposing penalties for field uses on dates subsequent to the date of the Notice would also affect the University's right to notice and the opportunity to be fully heard on the violations. At hearing, the University did not contest the fact that it had used the fields for youth soccer camps and other similar activities during the months of July and August. However, the July 6, 2011 Notice of Civil Violation did not provide notice to the University that it needed to be prepared on the specified hearing date to actively defend actions that occurred after the date of the Notice in order to avoid penalties being imposed for those dates .

### Decision and Order

The Notice of Civil Violation issued to Northwest University<sup>1</sup> on July 6, 2011 is affirmed.

In accordance with KZC 1.12.050.D.2, it is ordered that:

1. Effective August 29, 2011, Northwest University shall allow use of the three former Seahawks fields on its campus only for the exclusive use of Northwest University athletic practices and intramural activities, as defined in the above conclusions. This does not affect the occasional, informal use of the fields by those in the neighborhood that is currently allowed by the University.
2. Northwest University shall also incur a penalty of \$150 per day for the violation dates, June 1, 6, 8, 13, 14, 26, and 30, 2011, for a total of \$1050.00. The penalty shall be paid to the City of Kirkland on or before September 2 2011, after which date, the City may institute appropriate action to collect the penalty if it has not been paid.

Entered this 24<sup>th</sup> day of August, 2011.

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Sue A. Tanner  
Hearing Examiner

**Concerning Further Review**

KMC 1.12.050.F provides that “An appeal of the decision the hearing examiner must be filed with superior court within 21 calendar days from the date the hearing examiner’s decision was mailed to the person to whom the notice of civil violation was directed, or is thereafter barred.”