



King County

Permitting Division

Department of Local Services

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Regulatory Review Committee - Minutes -

Meeting Date: January 24, 2019

Minutes finalized: February 27, 2019

TO: Jim Chan, Director
Devon Shannon, Prosecuting Attorney's Office

Wally Archuleta
Sheryl Lux
Ty Peterson

Chris Ricketts
Steve Roberge

FM: Christine Jensen, Legislative/Policy Analyst and RRC Co-Chair
Kevin LeClair, Project/Program Manager and RRC Co-Chair

Present: Jeri Breazeal, Devon Shannon, Steve Bottheim, Chris Ricketts, Kevin LeClair,
Ty Peterson, Wally Archuleta, and Christine Jensen.

- 1. Concerning K.C.C. 21A.12.100 (minimum lot area for construction) and whether the minimum lot width exception applies to lots in a subdivision that was recorded before June 9, 1937.**

Background

In the May 14, 2015, the RRC conclusion stated: "Building permits may be issued for lots in the R zones legally created by the subdivision process prior to February 2, 1995. Such lots are buildable sites and must meet all the other criteria."

The 1996 AGO review and discussion built-on and reaffirmed a 1974 legal opinion (AGLO 1974 No.7) regarding land that was platted prior to the enactment of the 1937 platting and subdivision act (chapter 58.16 RCW), which was subsequently replaced by the current

subdivision and platting act enacted in 1969 (chapter 58.17 RCW). Prior to 1937 the requirements for platting were in of statutes codified in chapter 58.08 RCW arising from the laws of the 1857 Territorial Legislature, which did not include any requirement for local review or approval by any government officer or body.

Discussion

In light of a legal opinion issued by the Washington State Attorney General (AGO 1996 No. 5 – 2-29-1996), the Committee revisited its previous conclusion from May 14, 2015, on the application of K.C.C. 21A.12.100 as it relates to lots smaller than 25 feet in width created prior to February 2, 1995.

The AG essentially states that, prior to 1937, there were no regulatory review or land use reviews required to ensure subdivisions were consistent with local land use policies and regulations, if any existed. With some substantial factual discussion, the two AG opinions concluded that local governments should not simply accept lots created prior to 1937 without conducting at least some review under current law.

In the practical terms of applying the regulations contained in King County Code, specifically K.C.C. 21A.12.100 and the related K.C.C. 19A.08.070 (Determining and maintaining legal status of a lot), the AG opinion advises local governments that they may want to adopt an alternate procedure for reviewing pre-1937 plats that have been partially or fully developed.

Conclusion

The committee did not feel it was necessary to revise its May 14, 2015 conclusion because the Permitting Division reviews the lot or combination of lots against the regulations contained within K.C.C. 19.08.070 which sets a list of criteria for recognizing lots created prior to 1937 as legal; and the language of K.C.C. 21A.12.100 that states that construction may be permitted on “lots created prior to February 2, 1995 in a recorded subdivision or short subdivision, which complied with applicable subdivision or short subdivision laws.” These two regulations, when taken in concert, ensure a lot is legal and would be viable for building in accordance with the King County Code as it currently reads. Absent the ability to comply with these standards, a new subdivision review process would be required.

The committee recommends this issue be the subject of a possible future revision to the K.C.C. to require that undeveloped lots created prior to 1937 not be accepted as a buildable lots unless they are reviewed for compliance with current subdivision or short subdivision regulations.

Indexes

Subjects: minimum lot area, subdivisions, plats
Code: 21A.12.100

2. Concerning K.C.C. Title 21A and whether small-scale solar energy systems are considered an accessory use allowed by right in all major zones.

Background

The King County Comprehensive Plan directs and manages anticipated growth across King County. Policy E-213 of the Comprehensive Plan supports and encourages the use of renewable energy systems.

“E-213 King County should ensure that its land use policies, development and building regulations, technical assistance programs, and incentive programs support and encourage the use of viable renewable energy technologies that have zero or minimal greenhouse gas emissions.”

K.C.C. Title 21A houses many of the land use development regulations in unincorporated King County, and is based on the goals of the Comprehensive Plan. The only energy generation uses defined in Title 21A apply to regional hydroelectric or non-hydroelectric generation utility-scale facilities, which does not address small-scale renewable energy technologies such as small-scale solar energy systems.

Discussion

Rooftop or ground-mounted small-scale solar energy systems are used on a building site to support the powering of a structure that is the primary use on the site. Title 21A does not define or expressly permit non-utility energy generation systems (such as solar systems), nor does it distinguish between rooftop or ground-mounted installations.

K.C.C. Chapter 21A.08 does allow for accessory uses when they are listed as permitted uses in the land use tables. K.C.C. 21A.06.013 defines accessory uses as the following:

“Accessory use: a use, structure or activity that is:
A. Customarily associated with a principal use;
B. Located on the same site as the principal use; and
C. Subordinate and incidental to the principal use.”

For any accessory uses that are not expressly permitted in the use tables in Chapter 21A.08, K.C.C. 21A.08.025 allows the Permitting Division to “determine whether any accessory use on a site is incidental or subordinate to a principal use on the same site and whether uses not listed as accessory uses are customarily associated with a principal use.”

Conclusion

Small-scale solar energy systems are incidental and subordinate to the primary use on the same site and typically serve the primary use. Given this, small-scale solar energy systems are an accessory use that is permitted by right in all major zones, as long as the

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primary use structure that the energy system is supporting is an allowed use for that zone and the structural and development standards of the King County Code are met.

Indexes

Subjects: permitted uses, solar energy systems, accessory uses

Code: 21A.08