

ARAMBURU & EUSTIS, LLP

Attorneys at Law

J. Richard Aramburu
rick@aramburu-eustis.com
Jeffrey M. Eustis
eustis@aramburu-eustis.com

720 Third Avenue, Suite 2000
Seattle, WA 98104
Tel 206.625.9515
Fax 206.682.1376
www.aramburu-eustis.com

FILED BY
EMAIL
March 4, 2014

March 4, 2014

RECEIVED

MAR 05 2014

City of Woodinville

James M. Driscoll
City of Woodinville Hearing Examiner
17301 133rd Avenue N.E.
Woodinville, WA 98072

Re: i-Ball Conditional Use Permit Application
City of Woodinville CUP13004 / SEP13022

RECEIVED

MAR 05 2014

CITY OF WOODINVILLE
DEVELOPMENT SERVICES
Received via Email
March 4, 2014 sg

Dear Mr. Driscoll:

I write today on behalf of Kirkwood Industries in response to the letter from architect Eric Koch submitted to the Hearing Examiner on Friday, February 28, 2014 ("Koch Letter"). This letter will address legal and policy issues. I also attach a sworn declaration from Tom Robinson responding to alleged factual statements made in the Koch Letter.

1. FIRE LANE REQUIREMENTS. As explained in Mr. Robinson's Declaration, no fire lanes have been established within the Northwood Industrial Park.

2. BASKETBALL AS AN "INDUSTRY." Basketball is not an "industry" as i-Ball claims. WMC 21.04.130 sets forth the purpose of the 'Industrial zone' as follows:

(1) The purpose of the Industrial zone (I) is to provide for the location and grouping of industrial enterprises and activities involving manufacturing, assembly, fabrication, processing, bulk handling and storage, research facilities, warehousing and heavy trucking

Indeed i-Ball claims to be a "Sports Club" which is grouped under "Amusement/Entertainment" uses under WMC 21.08.040: "Recreational/cultural land uses." It can not claim to be an industrial use under Woodinville codes.

ORIGINAL

March 4, 2014
Page 2

3. APPLICANT IMPROVEMENTS: RELOCATION TO ADJACENT SPACE. At the hearing, Kirkwood recommended that the i-Ball use be located in a space at the northwest corner of Building A away from the industrial activity at Kirkwood. i-Ball has responded that:

Relocation is not an option. The lease is signed, and all items exempt from permitting have already been completed.

.....

As mentioned above, the lease is signed, and interior painting and court preparation is complete.

Koch Letter, page 2. i-Ball is not entitled to use its own expenditures to “bootstrap” itself into a permit. The Koch Letter makes no contention that the northwest corner of Building A is not available for i-Ball’s use.

To begin with, the Notice of Application issued by the City on September 9, 2013 indicated that: “Tenant improvements limited to bathroom upgrades and energy amendments as required through the building permit process of a change of use.” Nothing was mentioned about immediate construction of a basketball floor.

As well, Kirkwood promptly, and within the original comment period, entered their comments and objections to the use. See email from Tom Robinson to Sarah Ruether dated September 18, 2013 (Exhibit 15, p.1-6). This email indicated concerns over mixing children with industrial uses. This was followed up by a letter from the undersigned dated October 21, 2013 (Ex.15, p. 8-11) providing comprehensive comments on the project during the SEPA comment period. Other objections were raised in correspondence dated December 9, 2013 (Ex. 15, p.12-13) and responses to parking issues provided in a letter dated January 24, 2014 (Ex. 15, p.14-15).

Notwithstanding i-Ball’s own application, and continuous objections from Kirkwood and its counsel, i-Ball has arrogantly spent money on improvements in the building before a permit decision has been made. It now claims certain conditions are “not an option” because it has signed a lease and spend money on paint and “court preparation.”

Washington law does not permit a permit applicant to spend money on property improvements prior to resolution of land use issues and then attempt to manipulate the land use process based on such expenditures. Thus, in *Eastlake Community Council v. Roanoke Associates, Inc.*, 513 P.2d 36, 82 Wn.2d 475, 484-85 (Wash. 1973), our court stated:

Defendant started the project with full awareness that there were multiple, serious legal obstacles and cannot now claim relief simply because money was expended in the face of an awareness it might not have a legal right to proceed.

March 4, 2014
Page 3

The *Eastlake* court also cited *Bach v. Sarich*, 74 Wash.2d 575, 445 P.2d 648 (1968) as follows:

In *Bach*, at page 581, 445 P.2d at page 652, we recognized that '(f)rom the very commencement of defendants' construction they were aware of the protests of other riparian owners. The encroaching structure did not exist at the time of suit, but was built during the pendency of this suit.' In that case we refused to consider equitable relief premised upon the money expended during litigation.

82 Wn.2d at 485. Indeed, the i-Ball website now even promotes the installation of the Court as a part of its marketing, at what is now called the "i-Ball Sports Complex." See Exhibit A.

This applicant cannot claim the expenditure of money as a means to force the Hearing Examiner and City to give it a permit.

Based on the foregoing, it is apparent that the proposed i-Ball facility does not meet the criteria for a conditional use permit and the application should be denied.

Sincerely yours,

ARAMBURU & EUSTIS, LLP



J. Richard Aramburu

JRA:cc
cc: Clients



Little Ballers

Ages 5-9
Held at the i-Ball Sports Complex on our new official NCAA basketball court

i-Ball Games
Kids will be assigned to teams weekly and will play games

Fundamental Skill Training
Classic Footwork ~ Ball Control ~ Shooting Form
Offensive, Defensive Position & Presence

8 Week Sessions

i-BallLive.com **EVERYTHING BASKETBALL**

OWN YOUR GAME

Lake Washington School District does not sponsor, endorse, or recommend any of the organizations, services, or activities described in these materials. In consideration for the privilege to distribute these materials, Lake Washington School District shall be held harmless from any causes of action filed in any court or administrative tribunal arising out of the distribution of these materials, including all costs, attorney's fees, judgments, or awards.

<https://www.i-balllive.com/programs/little-ballers.html>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE HEARING EXAMINER
FOR THE CITY OF WOODINVILLE

In re
Application of i-Ball for a Conditional Use
Permit

Project NO. CUP13004,
SEP13022

REBUTTAL DECLARATION OF
APPELLANT TOM ROBINSON
AND KIRKWOOD INDUSTRIES

I am Tom Robinson, CEO of Kirkwood Industries. I make this declaration in reply to the letter of February 28, 2014 from Eric Koch ("Koch Letter"), the agent for i-Ball, which responded to correspondence and a letter from Kirkwood submitted during the February 25 hearing.

There are several errors in the information provided in the Koch letter which are discussed below.

1. INDUSTRIAL OPERATING HOURS.

There are references in the Koch Letter that construction operating hours are a "6:30 to 3:30" activity. Since Mr. Koch is an architect, not the owner of an industrial business, he has no background to provide such an opinion. We assure you that the Northwood Industrial Park is quite active post 3:30 PM.

Analogies to the construction business are not appropriate. Kirkwood is not in the construction business and does not sell directly to construction

ORIGINAL

1 contractors. We sell to suppliers to the construction business and do not run on
2 contractors' hours.

3 Many of the companies in the North and South portions of Northwood
4 Industrial Park are involved in manufacturing and distribution. Most companies,
5 including Kirkwood Industries, Inc. use their own delivery vehicles and customer
6 will call vehicles, as well as common carriers and other semi-truck operators to
7 conduct business. Access by all trucking types into the Industrial Business Park
8 is necessary and continues at least until 5 p.m. on weekdays. Indeed, during the
9 busy summer construction season with longer daylight, large trucks sometimes
10 access our business after 5 p.m. and on weekends.

11 **2. LOADING AND UNLOADING.**

12 The Northwood Industrial Park was developed in 1980 while this area was
13 still in King County. The construction of various building used most of the
14 available space within the lots. Because of this, there is limited space for off-
15 loading truck and flatbed trailer combinations. As shown in the photographs
16 presented, lengths of steel used by Kirkwood for rebar fabrication must be off-
17 loaded by forklifts from the side, requiring backing and maneuvering space.

18 Mr. Koch asks the rhetorical question on page 3 of his letter as to how
19 other tenants maneuver while Kirkwood vehicles unload. First, during all of our
20 time at this location, there has never been a complaint concerning our loading or
21 unloading of vehicles. Second, off loading from flat bed trailers temporarily
22 parked in access spaces is common throughout the industrial park. Attached
23 Exhibit A shows granite/marble being offloaded from a truck and flatbed trailer
24 combination to "Accents and Interiors," an industrial business at the southeast
25 corner of Building A, just to the east of the proposed i-Ball location. Exhibit B
26 shows the unloading of a semi-truck in the Northwood Industrial Park between
27 Buildings A and D (Building D is to the east of Building A) to deliver steel product

28

1 for SkoFlo Industries, an industrial business in Building D. This is common
2 activity for this business. Third, loading and unloading from flatbed trailers must
3 take place from the side of the trailer, requiring space for forklifts to back and
4 maneuver with large, heavy and awkward loads, such as 20 foot steel rebar.
5 Fourth, as shown by the photograph in Exhibit C, other vehicles, such as this
6 UPS truck can get around our vehicles, even while unloading.

7 **3. FIRE LANES.**

8 There are no established fire lanes in the area between Kirkwood and the
9 proposed i-Ball space. The only fire lane established in the entire park is shown
10 on Exhibit D along the north side of the entrance to the industrial park, just south
11 of Building D. Because the uses here were established in 1980, well before the
12 City of Woodinville annexed this area, Woodinville rules regarding fire lanes do
13 not apply.

14 **4. NUMBER OF PLAYERS/PARKING SPACES.**

15 At page 4 of its letter, i-Ball states that there will be a "surplus of parking
16 available." However, the original application of i-Ball states that there will be
17 "around 20 members at a time;" during the hearing it was indicated that there
18 may actually be 50-60 members at a time at the facility. The i-Ball website
19 described its programs, which include team play (including AAU teams), group
20 workouts, camps, and clinics, as well as play and teams for younger children.

21 This type of intense activity puts at question whether parking will be
22 adequate if there are 50-60 members at a time, with coaches and staff present,
23 as well as parents who will turn out to watch their kids' games and practices.
24 While i-Ball's response letter claims that it will require parents to walk their
25 children to the door (though no agreement to that effect is offered), such a
26 provision is virtually unenforceable, especially when teenagers are involved.

27
28

1 **5. COMPARISONS WITH NORTH SHORE SPORTS.**

2 On page 1 of the Koch letter, he says that the North Shore Sports batting
3 cages are an example of the "integration" of sports clubs into an industrial park.
4 The batting cage facility provides no comparison with i-Ball. The batting cages
5 are on the north side of Building B, northwest of Building A where i-Ball proposes
6 to operate. At this location, they are well removed from Kirkwood's industrial
7 operations.

8 **6. CONCLUSION**

9 Based on the foregoing, we request that the i-Ball conditional use permit
10 application be denied.

11 Sworn under oath this 4th day of March, 2014.

12
13 

14 Tom Robinson
15 CEO, Kirkwood Industries, Inc.

16
17
18
19
20
21
22
23
24
25
26
27
28

Northwood Industrial Park, North Tenant:

Accents & Interiors

Granite and Marble Processing for
counter tops and other solid surfaces

Location: Benton & Sollitt Building A

Activity:

Unloading of slabs from both sides of flatbed
trailer from middle of NE 193rd Place



Northwood Industrial Park, North Tenant:
SkoFlo Industries
Machine Shop

Location: Benton & Sollitt Building D, at the
south end adjacent to NE 193rd and
the industrial park entrance

Activity:
Unloading of steel supplies from semi-truck in
Middle of Roadway between Buildings A and D

Product:
Steel supplies for manufacturing and
processing



Northwood Industrial Park, North Tenant:
Accents & Interiors
Granite and Marble Processing for
counter tops and other solid surfaces

Location: Benton & Sollitt Building A

Activity:

- * UPS Delivery Vehicle passing Semi;
- * Unloading of slabs from both sides of (40') Semi-Truck in the middle of NE 193rd Place



EXHIBIT D

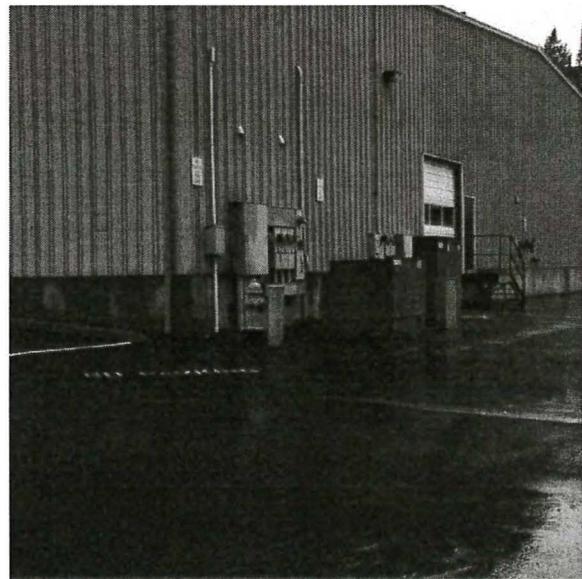
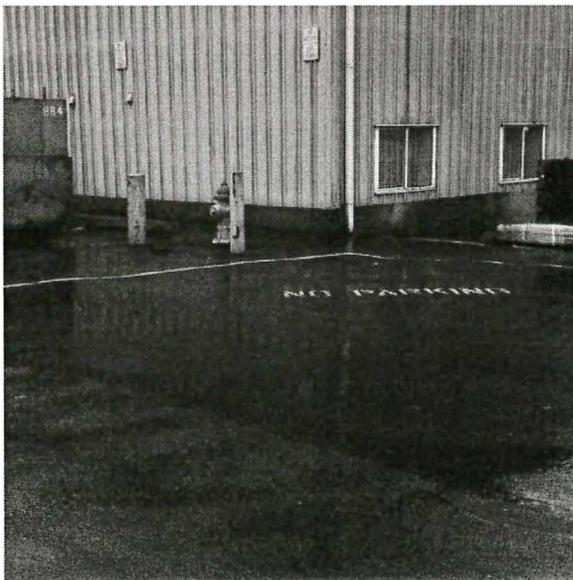


Fire Lane Marking

Appears only on North side of Entrance to Northwood Industrial Park, alongside Building B. There are no other such markings in the entire park except around the four fire hydrants.

Fire Hydrant Markings

“No Parking” in Fire Hydrant areas





Sandy Guinn

From: Carol [carol@aramburu-eustis.com]
Sent: Tuesday, March 04, 2014 3:52 PM
To: Erin Martindale; Sarah Ruether; Sandy Guinn
Cc: kylekeyes@i-balllive.com; steve@cic-cbc.com; eric@padgi.com; Rick Aramburu
Subject: i-Ball CUP Application: Rebuttal to Hearing Examiner
Attachments: 2014-03- iBall Rebuttal Aramburu to WHE Ex A.pdf; 2014-03-04 Aramburu to WHE re i-Ball.pdf; 2014-03- iBall Rebuttal Robinson Dec Ex A.pdf; 2014-03- iBall Rebuttal Robinson Dec Ex B.pdf; 2014-03- iBall Rebuttal Robinson Dec Ex C.pdf; 2014-03- iBall Rebuttal Robinson Dec Ex D.pdf; 2014-03-04 Robinson Rebuttal Declaration.pdf

Please accept for filing and provide to Hearing Examiner Driscoll the attached:

Letter from Mr. Aramburu in rebuttal, with Exhibit A
Declaration of T. Robinson, Kirkwood, with Exhibits A-D

The originals will be sent to the city by first class mail.

Carol Cohoe
ARAMBURU & EUSTIS, LLP
720 Third Avenue
Pacific Building Suite 2000
Seattle, WA 98104
Telephone (206) 625-9515
Facsimile (206) 682-1376

This message may be protected by the attorney-client and/or work product privilege. If you received this message in error please notify us and destroy the message. Thank you.