

November 27, 1996

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

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DECISION ON APPEAL OF THRESHOLD DETERMINATION.

SUBJECT: Department of Development and Environmental Services File No. B96C0043

SUBURBAN PROPANE, INC.

Application for Commercial Building Permit
Threshold Determination Appeal

Property located on the southeast corner of SE High Point Way and SE 84th Street in
Preston

Applicant: Suburban Propane, Inc., represented by:
George Kresovich, Esq. 1221 Second
Ave., #500
Seattle, WA 98101
Phone: 206 623-1745 Fax: 206 623-7789

Appellants: Preston Community Club and
Paul Carkeek, represented by:
David Bricklin, Esq.
Fourth & Pike Building #1015
Seattle, WA 98101
Phone: 206 621-8868 Fax: 206 621-0512

SUMMARY OF RECOMMENDATIONS AND DECISION:

Division's Preliminary:	Deny the appeal
Division's Final:	Deny the appeal
Examiner:	Deny the appeal

PRELIMINARY MATTERS:

Application submitted:	March 12, 1996
Notice of appeal received by Examiner:	August 30, 1996
Statement of appeal received by Examiner:	September 3, 1996
Department Preliminary Report issued:	November 5, 1996

EXAMINER PROCEEDINGS:

Pre-hearing Conference:	September 17, 1996
Hearing Opened:	November 5, 1996
Hearing Closed:	November 13, 1996

Participants at the proceedings and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner.

ISSUES ADDRESSED:

- Vesting
- Jurisdiction
- Compatibility of uses
- Design/aesthetics
- Environmental policy - threshold determination criteria

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On March 12, 1996, Suburban Propane, Inc. applied for a building permit for development of a 2.5 acre site at the intersection of Southeast High Point Way and Southeast 84th Street in unincorporated King County. The subject property is within the "Preston Industrial Area", and is zoned "I-P" (Industrial, subject to conditions).
2. On August 6, 1996, King County issued a mitigated determination of nonsignificance (MDNS) for the proposed action. The one mitigating condition established by the MDNS limited the height of ground-supported business signs on the property to not more than 5 feet.

On August 21, 1996, Preston Community Club and Paul Carkeek (the Appellants) filed an appeal of the MDNS. Numerous grounds of significant impact were alleged in the appeal. Four (noise; odor; police protection; and "maintenance") were dismissed at the close of the Appellants' case. The remaining issues are:

- Safety hazard (fire and explosion);
 - Relationship to County plans and development regulations;
 - Relationship to state law (Growth Management Act);
 - Aesthetics (including impacts on the rural and nearby historical area, fencing, landscape buffering, building height, outside lighting);
 - Water availability;
 - Traffic (including safety hazards, circulation, congestion, parking); and
 - Cumulative effect of industrial development.
3. The Appellants also raise the issue as to whether this application met King County's requirements for vesting on the date it was filed. King County has not yet acted on this application or taken any interim action which establishes the date of vesting. No ordinance invests the Hearing Examiner with jurisdiction to determine the vesting date in this proceeding.

Evidence and argument entered into the record concerning the date of vesting has been considered by the Examiner only to assist in determining the requirements of King County codes which are likely to be applicable to the proposal. For the purpose of determining whether the proposed action will have probable significant adverse impact on the environment, it is immaterial whether this application vested on March 12, 1996, or some date thereafter.

The proposed development facilitates sales and provides distribution of products which are sold, used and consumed primarily in the rural area. It is less likely to have probable significant impact upon the environment if located in an industrial zone within the rural area than if located in the urban area. Therefore, the proposal would not have significant adverse impact upon the future application and implementation of King County Comprehensive Plan Policy 315 or P-suffix conditions applicable to this and nearby properties, as they were amended by Ordinance 12170 on March 25, 1996.

4. Appellants introduced substantial evidence concerning the risks of catastrophic fire and explosion hazards associated with propane storage and distribution. Although the property damage and loss of life from an explosion or major fire could be disastrous, the evidence is overwhelming that the risk of such an occurrence from the activities proposed for this site is slight. No such occurrence has ever been experienced from propane storage and distribution within Washington; the frequency of occurrences nationally has been minimal.

Development and use of this site will be subject to National Fire Protection Association Standard

58, "Standard for the Storage and Handling of Liquefied Petroleum Gases", 1995 Ed, adopted as part of the Uniform Fire Code. No major fire or explosion has ever occurred at a facility designed with the safeguards proposed for the subject site, or at a facility protected by substantially similar precautionary measures.

5. Adjacent to the east and north of the subject property is the Preston Industrial Park development and expansion project, with industrial development encompassing an area many times larger than the subject property. This existing development is substantially unbuffered; is virtually 100% impervious surface; and has buildings many times larger in area and bulk than that proposed by Suburban Propane.

Immediately west of the subject property, across Southeast High Point Way, is a commercial area developed with convenience shopping, post office, and highway services. To the south, beyond an undeveloped parcel roughly equivalent in size to the subject property, is a log storage and firewood sales area.

Beyond the area immediately surrounding the subject property (west and south of Interstate 5; and east of the Preston Industrial Area), are residences and undeveloped land, the old Preston Mill and Preston Historical Area, all of which are rural in character. The residential areas to the east, west and southwest are at higher elevations than the Preston Industrial area and the subject property, and generally look down upon it and Interstate 5. However, the subject property constitutes a portion of that view which is practically "de minimis".

The proposed development is subject to the rural industry development standards set forth in KCC 21A.14.280, and the P-suffix conditions for the Preston Industrial Park properties, set forth in Ordinance 11653, Appendix "I". These standards will govern the development of the site to assure compatibility with the rural area consistent with King County Comprehensive Plan policies R-314 and R-316, as well as Policy 315, as amended.

The aesthetic impacts of this proposal on the surrounding rural area, resulting from the proposed building size and design, fencing, landscaping, light and glare, and parking, will be so minimal as to be virtually unnoticeable. Even considered cumulatively, these impacts of the proposed development at this site on the rural character of the surrounding area and the nearby historical area will be minor in the context of existing development in the area.

6. There is no evidence that the proposal will have any impact on the availability of water in the area.
7. The preponderance of evidence is that traffic generated by the proposal will be light, consisting of approximately 30 average daily vehicle trips. The existing road system, with the proposed onsite parking and maneuvering area, can accommodate the proposed use, including delivery vehicles. There is no evidence that traffic movements to and from this site would pose a particular or unusual hazard.
8. The Appellants assert that King County Ordinance 9110 imposes a requirement on the County to prepare an EIS for this proposal. That ordinance was adopted August 28, 1989, as an emergency measure while the proposed Snoqualmie Valley Community Plan and area zoning were under review by the King County Council. The purpose of Ordinance No. 9110 was to immediately implement area zoning guidelines consistent with policies which had been adopted in Ordinance No. 3503, but which had not been previously implemented as regulatory requirements.

The policy of immediate concern was:

"Any development adjacent to a freeway interchange shall be preceded by an environmental impact assessment to examine the potential effect on nearby communities and the natural environment."
Ordinance 3503, Addendum Section VI (Exhibit 23).

Ordinance 9110 provided:

"This emergency ordinance to regulate land use and zoning at the Preston interchange is warranted as an emergency measure to safeguard the public welfare by implementing the adoption of the relevant sections of the new community plan without delay, and as a safeguard against irreparable impact from additional construction activity on conditions

contrary to adopted County policy without sufficient public review." Ordinance 9110, Preamble, Section 7 (Exhibit 6).

"The zoning and "P" suffix conditions contained in the executive proposed Snoqualmie Community Plan and area zoning for the properties shown on Attachment A and as further amended by Attachment B are hereby adopted." Ordinance 9110, Section 1.

Although the evidence in this record is insufficient to make a definitive finding as to whether the subject property was included within the purview of Ordinance 9110, that question is immaterial. Subsequent to enactment of Ordinance No. 9110, the Snoqualmie Valley Community Plan and Area Zoning were adopted by Ordinance No. 9118 on August 29, 1989. Ordinance 3503 was repealed. The Area Zoning intended, and has the effect, of establishing the zone classifications and development conditions for all properties within the planning area.

As adopted on August 29, 1989, the area zoning established development conditions which differed for those properties zoned "potential M-P" and those zoned "M-P" outright. The "AR-10 potential MP-P" zoned land carried the condition:

"Environmental studies must be prepared which include an opportunity for public review and comment and examine the impacts of the proposed uses on surrounding rural residential lands in the historic Preston core.... (language virtually identical to Ordinance No. 9110)....The environmental studies shall discuss all relevant policies related to the Preston area and Interstate 90."

Property zoned outright "MP-P" by the Snoqualmie Valley Area Zoning, which included the subject property, did not carry a P-suffix requirement for preparation of environmental studies.

9. The files and records of the King County Department of Development and Environmental Services contained sufficient information to enable the responsible official to reasonably assess the probability of significant adverse impact upon the environment resulting from the proposed development.

CONCLUSIONS:

1. The evidence fails to show that development of the subject property as proposed by Suburban Propane, Inc. would have significant adverse impacts upon any element of the environment. This conclusion applies without regard to whether the proposal is subject to regulations in effect on March 12, 1996, or policies and regulations which took effect subsequent to that date.
2. Fire and explosion are risks associated with the storage and distribution of liquified petroleum gas; those risks cannot be entirely eliminated by precautionary measures. The development and operation of the site will be in accordance with all applicable codes and regulations, as well as additional safety precautions which are routinely implemented by this applicant at its distribution facilities. These requirements and practices minimize the risk of fire and explosion to the extent reasonably possible. The likelihood of fire or explosion resulting from the development and operation of the site is so slight as to not constitute a significant adverse impact upon the environment.
3. Provisions of the King County zoning code, including the ordinances currently in effect which govern development in the vicinity of the Preston interchange, require environmental studies as a condition of reclassification of properties potentially zoned for industrial use; they do not specially require environmental studies for the development of property (including the subject property) which was zoned outright "M-P" in the Snoqualmie Valley Community Plan Area Zoning.
4. The King County Department of Development and Environmental Services had adequate information to make the Mitigated Determination of Environmental Nonsignificance issued on August 6, 1996, for the proposed development.
5. The appeal by Preston Community Club and Paul Carkeek of the Mitigated Determination of Environmental Nonsignificance should be denied.

DECISION:

The appeal by Preston Community Club and Paul Carkeek of the Mitigated Determination of Nonsignificance for the proposed development by Suburban Propane, Inc. is DENIED.

ORDERED this 27th day of November, 1996.

James N. O'Connor
King County Hearing Examiner

TRANSMITTED this 27th day of November, 1996, to the following parties and interested persons:

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Barbara Heavey, Paul Wozniak and Marilyn Cox - Department of Development and Environmental Service, SEPA Section
Charlie Sundberg - Historical Preservation

MINUTES OF THE NOVEMBER 5, 6, 12, and 13, 1996, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. B96C0043 - SUBURBAN PROPANE, INC. SEPA APPEAL.

James N. O'Connor was the Hearing Examiner in this matter. Participating at the hearing were Barbara Heavey, David Baugh and Steve Phelps, representing the County; David Phelps, Ty Davis, Robert Martin, John Freeman, George Kresovich, Steve Thorne, Marianne Tagney-Jones, Doug McClelland, Paul Carkeek and Michael Merrill.

The following exhibits were offered and entered into the hearing record November 5, 1996:

Exhibit No. 1	Department of Development and Environmental Services, Land Use Services Division Report to the Hearing Examiner
Exhibit No. 2	Mitigated Determination of Nonsignificance for Liquid Propane Distribution, issued August 6, 1966
Exhibit No. 3	Environmental Checklist Form prepared January 29, 1996, Revised
Exhibit No. 4	Appeal of Mitigated Determination of Non-Significance ("MDNS") for Liquid Propane Distribution E96E0059, David A. Bricklin, August 21, 1996
Exhibit No. 5	Suburban Propane Plans Sheet 1 of 22, 2 of 22, 3 of 22, 5 of 22, C2 of 6, and 2 of 22 with fire engineering approval
Exhibit No. 6	Ordinance 9110
Exhibit No. 7	Snoqualmie Valley Community Plan and Area Zoning for W 1/2 T24N R7E
Exhibit No. 8	Snoqualmie Valley Community Plan and Area Zoning for E 32-24-7
Exhibit No. 9	Appendix I to Ordinance 11653
Exhibit No. 10	Ordinance 12170 amendment 12-3, 13-2 and 14-1
Exhibit No. 11	Rural Industry Development Standards Comparison Chart
Exhibit No. 12	SEPA file
Exhibit No. 13	Stephen Thorne resume'
Exhibit No. 14	Large photograph of Arizona propane explosion
Exhibit No. 15	Report prepared by Thorne
Exhibit No. 16	Excerpt from NFPA 58 Standard for the Storage and Handling of Liquified Petroleum Gases 1995 Edition (Excerpt from Exhibit No. 20)
Exhibit No. 17	Excerpt from Guidelines for Conducting a Fire Safety Analysis
Exhibit No. 18	Colorized copy of most recent site plan (showing 2 tanks)
Exhibit No. 19	Site plan received April 2, 1996 by SEPA
Exhibit No. 20	Standard for the Storage and Handling of Liquified Propane Gases 1995 NFPA 58
Exhibit No. 21	American Fire Journal July 1993
Exhibit No. 22	Aerial photograph
Exhibit No. 23	Ordinance 3503
Exhibit No. 24	Beginning with Exhibit D of paper on SEPA written by Tagney-Jones
Exhibit No. 25	November 4, 1996, memorandum from Steve and Nancy Tochko

The following exhibits were offered and entered into the hearing record November 6, 1996:

Exhibit No. 26	October 7, 1996, Comparative Separation Distance Safety Site Investigation - Issaquah/Preston
Exhibit No. 27	Letter dated March 18, 1996, from Michael Merrill to Steve Phelps (King County Fire Protection Engineer) with fire safety analysis
Exhibit No. 28	Withdrawn
Exhibit No. 29	Final Technical Report for USDE Operational Safety Programs LPG Land Transportation and Storage Study
Exhibit No. 30	Letter dated April 25, 1996, from Jeff O'Neill (King County) to Don Roupe (Group 4)
Exhibit No. 31	Freeman resume'
Exhibit No. 32	Letter dated June 18, 1996, from Michael Merrill in response to April 25, 1996, letter (Exhibit No. 31) from Jeff O'Neill
Exhibit No. 33	Suburban Training Detail by Area and Region and other pertinent materials
Exhibit No. 34	District Emergency Action Plan

The following exhibits were offered and entered into the hearing record November 12, 1996:

Exhibit No. 35	Sketch of current location of facility on Gilman Blvd. showing relative locations of other businesses
Exhibit No. 36	Suburban Propane brochure giving general overview of company
Exhibit No. 37	Map showing district service area indicating Urban/Rural and Growth areas
Exhibit No. 38	Complete application requirements for building permit
Exhibit No. 39	Pre-application meeting notice with attachments
Exhibit No. 40	Village Development Plan Preston, Washington 1 November 1993
Exhibit No. 41	Review of Fire Safety Analysis (NOT ADMITTED)

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