


SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR ISLAND COUNTY

Law & Justice Facility, 101 NE 6th St, PO Box 5000, Coupeville WA 98239-5000
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ALAN R. HANCOCK
Judge
VICKIE I. CHURCHILL
Judge
ANDREW SOMERS
Court Administrator

April 30, 2018

Carla J. Higginson
Higginson Beyer, P.S.
175 Second Street North
Friday Harbor, WA 98250

Amy S. Vira
Deputy Prosecuting Attorney
P.O. Box 760
Friday Harbor, WA 98250

Re: *Inter Island Propane, LLC v. San Juan County*
San Juan County Cause No. 17-2-05158-7
Court's Decision on LUPA Appeal

Dear Counsel:

1. Background

On October 2, 2017, San Juan County Hearing Examiner Sharon A. Rice issued her Findings, Conclusions, and Decision denying petitioner Inter Island Propane, LLC's application for a conditional use permit to install a bulk propane storage and distribution facility in Eastsound, Orcas Island, San Juan County. Inter Island seeks reversal of this decision in this court by means of a petition pursuant to the Land Use Petition Act, chapter 36.70C RCW. The court held a hearing on the issues on April 20, 2018, and heard the arguments of counsel. The court has reviewed the entire record in this case, including the transcript of the hearing held before the hearing examiner on July 13, 2017, and all of the documentary exhibits. The court is now prepared to rule on the petition.

The documentary exhibits and the testimony at the public hearing raised a number of issues for consideration by the hearing examiner, as outlined in the hearing examiner's findings. However, the hearing examiner denied the application based on inadequate fire protection (Conclusion 2), the failure to identify an emergency evacuation route, incompatibility with the Orcas Island Airport, and inadequate water supply for fire suppression (Conclusion 3), and

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**SAN JUAN COUNTY
PROSECUTING ATTORNEY**

inadequate fire flow and an emergency-agency approved evacuation route (Conclusion 4). Thus, it is apparent that the hearing examiner found no basis to deny the application based on the other concerns raised.¹ In any event, after a thorough review of record, it is apparent that none of the other issues raised would warrant denial of the application. Accordingly, the court will focus its decision on the issues of fire protection, the emergency evacuation route, and compatibility with the Orcas Island Airport.

2. Legal Standards

Under RCW 36.70C.130(1), the court may grant relief to Inter Island only if it carries its burden of establishing that one of the standards set forth in (a) through (f) of subsection (1) have been met. In the present case, Inter Island relies on standard (c) “[t]he land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court” and standard (d) “[t]he land use decision is a clearly erroneous application of the law to the facts.”

With regard to standard (c), “[s]ubstantial evidence is evidence that would persuade a fair-minded person of the truth of the statement asserted.” *Abbey Rd. Group LLC v. City of Bonney Lake*, 167 Wn.2d 242, 250, 218 P.3d 180 (2009). “In order to conclude that substantial evidence supports the factual findings, there must be a sufficient quantity of evidence in the record to persuade a reasonable person that the declared premise is true.” *Wenatchee Sportsmen Ass’n. v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000).

With regard to standard (d), “[a] finding is clearly erroneous under subsection (d) when, although there is evidence to support it, the reviewing court on the record is left with the definite and firm conviction that a mistake has been committed.” *Id.*, at 176.

3. Analysis

Inter Island provides propane delivery service in the San Juan Islands. In this case, it requested a conditional use permit to install a 30,000 gallon propane storage tank and required fencing and a 20 foot natural vegetation buffer at 27 Aeroview Lane, Eastsound, Washington. The requested storage tank and slab on which it would sit would cover no more than one-third of the lot. The tank specifications exceeded industry standards for storage of liquid propane gas (LPG) as set by the National Fire Protection Agency. There would be no other facilities sited on the property. The propane would be filled about once every two weeks and accessed about twice a day.

The property where the requested tank would be located is in a Service and Light Industrial area as designated by the Eastsound Subarea Plan. In her Finding No. 3, the hearing examiner correctly stated the purposes of this land use designation:

¹ Also, there was no cross appeal seeking affirmance of the hearing examiner’s decision on grounds other than those relied upon by the hearing examiner.

The subject parcel is located within the boundaries of the Eastsound Subarea Plan with a Service Light and Industrial (SLI) land use designation. The purposes of this land use designation include: a) ***to accommodate commercial services and light industrial or construction related activities*** as well as accessory office and retail sales related to such services and activities which may not be appropriate within the Village Commercial District; b) to accommodate the existing airport-related facilities and services which are located outside of the Airport Use District; c) ***to concentrate the above uses around the Eastsound airport where they have already been established***; d) ***to concentrate the above uses in a manner that will enable efficient use of the transportation system***; and e) ***to prohibit new residential development other than residential units accessory to a commercial or industrial use and located within a commercial or industrial building.*** Ordinance 21-2015; Exhibit A. (Emphasis added.)

Julia Thompson, San Juan County Department of Community Development Planner, concluded that the permit application met all applicable county development standards (including fire protection standards), all applicable standards for tank farms, and the criteria for issuance of a conditional use permit. She recommended that the application be approved with the conditions recommended by the Office of the Fire Marshall. One of the specific conditions was that a fire hydrant be installed meeting the commercial hydrant flow requirements of the county code (500 gallons per minute for 60 minutes). The county issued a Determination of Nonsignificance under the State Environmental Policy Act of 1971 (SEPA). This determination was not appealed.

After conducting the required public hearing, the hearing examiner remanded the application for further analysis. After the receipt of the requested additional information, the hearing examiner denied the application based on concerns relating to fire protection, an emergency evacuation route, and compatibility with the Orcas Island Airport.

3.(a) The hearing examiner's Findings are defective.

RCW 36.70.970 concerns the adoption of a hearing examiner system by counties. Subsection (3) of the statute provides that “[e]ach final decision of a hearing examiner shall be in writing and shall include ***findings and conclusions***, based on the record, to support the decision. Such findings and conclusions shall also set forth the manner in which the decision would carry out and conform to the county’s comprehensive plan and the county’s development regulations.” (Emphasis added.)

Proceedings before a county hearing examiner are quasi-judicial proceedings. In the absence of any authority to the contrary, the court should apply the principles relating to findings of fact and conclusions of law that relate to court proceedings. Findings of fact need only include the ultimate facts found by the judge (or in this case, the hearing examiner) on the material issues. *Whitney v. McKay*, 54 Wn.2d 672, 678-79, 344 P.2d 497 (1959). “A material fact is one which a reasonable [person] would attach importance to in determining his [or her] course of action.

[Citation omitted.]” *Wold v. Wold*, 7 Wn. App. 872, 875, 503 P.2d 118 (1972). “Ultimate facts are the essential and determining facts upon which the conclusion rests and without which the judgment would lack support in an essential particular. They are the necessary and controlling facts which must be found in order for the court to apply the law to reach a decision. [Citations omitted.]” *Id.* Other important principles are set forth in *Lobdell v. Sugar ‘N Spice, Inc.*, 33 Wn. App. 881, 887, 658 P.2d 1267 (1983) as follows:

We are bound by findings of fact which are supported by substantial evidence. [Citation omitted.] No finding as to a material fact constitutes a negative finding, [citation omitted], unless there is undisputed evidence which an appellate court can hold compels a contrary finding. [Citation omitted.] An appellate court may also independently review evidence consisting of written documents. [Citation omitted.]

It is readily apparent that the hearing examiner’s findings do not conform to certain of these principles. Rather than making ultimate findings on the material issues, the hearing examiner did little more than summarize the testimony at the hearing and the exhibits. The hearing examiner never stated anything to the effect that she found certain of the various statements and written comments to be persuasive, as opposed to other statements and comments to the contrary. She simply indicated that certain persons submitted written comments on various matters, and other persons gave testimony on various matters. As far as written materials submitted before the public hearing are concerned, she referenced the application itself and the county staff report (Findings 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, and 19), and written comments of San County Fire Marshall RJ Myers (Findings 17 and 18), the Eastsound Planning Review Committee (EPRC) (Finding 19), the public (Finding 20), the Orcas Fire Chief (Finding 21), Dave Robinson from Gibsons Gas (Finding 25), and Paul Kamin, General Manager of Eastsound Water (Finding 21). She further referenced testimony at the public hearing from Donny Galt, the owner of Inter Island Propane (Findings 5, 6, 26 and 27), co-owner Jimmy Lawson (Finding 26), San Juan County Department of Community Development Planner Julie Thompson (Findings 12 and 14), Fire Marshall Myers (Finding 18), Dave Robinson (Finding 25), Arch Hudelson of Meeder Ransome (Finding 23 and 24), Paul Kamin (Finding 21), and other interested members of the public, Rick Fant, Barbara Gourley, Pat Muffett, Eric Gourley, Deedre Hildalgo, Wayne Rankin, Kim Middleton, and Margie Doyle (Finding 22). She further referenced the written materials submitted after the public hearing on remand, i.e., the post-remand county staff report (Findings 34-42), county staff’s response to the public comment at the public hearing with attachments (Findings 28-31), and the applicant’s response to the public comments (Finding 32). The hearing examiner made no reference to the applicant’s response to the remand order (Exhibit 30 with attachments) in her findings.

3.(b) The hearing examiner’s “Conclusions Based on Findings” are clearly erroneous.

The hearing examiner correctly set forth conclusions concerning her jurisdiction, the criteria for reviewing an application for a conditional use permit, and other applicable San Juan County Code (SJCC) provisions relating to this application. But her “Conclusions Based on Findings” are defective both procedurally and substantively.

Conclusions 2, 3, and 4 state as follows:

2. In order for a conditional use permit to be granted, the Applicant must affirmatively demonstrate compliance with all ten criteria for approval established at SJCC 18.80.100.D. The record presented does not demonstrate compliance with criterion 5, which requires the proposed use to be adequately served by existing public facilities and services including fire protection and water. The information submitted by the water purveyor **suggests** that while the rate of fire flow at the proposed hydrant on Seaview is not known, it is likely not to be adequate, and that in order to have adequate fire flow at that location, the existing water main would need to be replaced. The costs of the replacement are expected to be borne by the proponent of the project that triggers the need for increased flow volume. The Fire Marshal also **recommended** that 500 gpm be required to be shown from multiple hydrant locations. The record does not include evidence of the required fire flow volumes at the other nearby hydrants. The Applicant conceded that the applicable standard requires a fire flow of 500 gpm, and that such flow volumes are not known to be present. Further, Orcas Fire & Rescue, the on-island emergency response agency, has low staffing levels and relies on volunteer fire fighters and off-island emergency responders to address incidents such as the possible worst case scenario at a bulk fuel storage facility. The Orcas Fire Chief has **reportedly suggested** that closer to 1,000 gpm would actually be needed in the event of equipment failure and tank fire on-site. This figure was corroborated by the County Fire Marshal. Clearly, 1,000 gpm is not demonstrated to be available. *Findings 17, 18, 19, 20, 21, 22, 27, 30, 31, 39, and 40.* (Emphasis added.)

3. The record as a whole fails to demonstrate compliance with criterion 3 ("the proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval") in failing to identify an emergency evacuation route. Comments submitted from the Orcas Island Airport **tend to show** failure to satisfy criterion 9 ("the proposal does not include any use or activity that would result in the siting of an incompatible use adjacent to an airport or airfield (RCW 36.70.547)"). *Findings 19, 20, 21, 41, and 42.* (Emphasis added.)

4. In not demonstrating adequate water supply for fire suppression, the proposal **arguably** fails to satisfy the site development standards for new industrial uses (SJCC 18.40.280.1 and 280.2), as well as standards for tank farms (SJCC 18.40.420.A and 420.B). *Findings 17, 18, 19, 20, 21, 22, 27, 30, 31, 39, and 40.* (Emphasis added.)

The proposed project is a conditional use in the Eastsound Service and Light Industrial (SLI) land use designation within which the property is situated. It meets all criteria relating to design standards, critical aquifer recharge areas, industrial uses, tank farm facilities, and standards for new and substantially altered development for Eastsound, Orcas Island, with the exception,

according to the hearing examiner, of inadequate water supply for fire suppression, the lack of an evacuation route, and incompatibility with the Orcas Island Airport.

Pursuant to SJCC 18.80.100.D, a conditional use permit shall be granted by the County only if the following criteria are met:

1. The proposed use will not be contrary to the intent or purposes and regulations of this code or the Comprehensive Plan;
2. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located;
3. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval;
4. The cumulative impact of additional requests for like actions (the total of the conditional uses over time or space) will not produce significant adverse effects to the environment that cannot be mitigated by conditions of approval;
5. The proposal will be served by adequate facilities including access, fire protection, water, stormwater control, and sewage disposal facilities;
6. The location, size, and height of buildings, structures, walls and fences, and screening vegetation associated with the proposed use shall not unreasonably interfere with allowable development or use of neighboring properties;
7. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood;
8. The proposal complies with the performance standards set forth in Chapter 18.40 SJCC;
9. The proposal does not include any use or activity that would result in the siting of an incompatible use adjacent to an airport or airfield (RCW 36.70.547); and
10. The proposal conforms to the development standards in Chapter 18.60 SJCC.

In Conclusion 2, the hearing examiner based her decision to deny the application on criterion 5, which provides that the proposal will be served by adequate facilities including fire protection and water. In Conclusion 4, she focused on site development standards for new industrial uses under SJCC 18.40.280.A.1 and .280.A.2, as well as standards for tank farms, i.e., SJCC 18.40.420.A and 420.B, in her decision to deny the application.

SJCC 18.40.280.A.1 provides that the “use of chemicals, industrial solvents, or other noxious or hazardous substances shall comply with all federal, state, and County safety, fire, structural, storage, and disposal standards.” Subsection A.2 provides the “[w]ater supplies, wastewater, and sewage disposal facilities adequate to serve the proposed use shall be provided.”

SJCC 18.40.420.A states that water supplies adequate to serve the proposed use shall be provided, and SJCC 18.40.420.B states that all tank farm facilities must meet the site standards for industrial uses under SJCC 18.40.280.

3.(b)(1) *The applicant proved that by complying with county fire flow requirements, an adequate water supply for fire protection will be available.*

The issue, then, is whether the applicant bore its burden of proving compliance with these provisions. The hearing examiner based her conclusions in this regard on comments from Paul Kamin, General Manager of the applicable water purveyor, Eastsound Water Users Association, which, according to the hearing examiner, “suggest” that “while the rate of fire flow at the proposed hydrant on Seaview is not known, it is likely not to be adequate, and that in order to have adequate fire flow at that location, the existing water main would need to be replaced.” The hearing examiner also cited Fire Marshall RJ Myers’s recommendation that “500 gallons per minute be required to be shown from multiple hydrant locations.” She also noted the low staffing levels of the emergency response agency, Orcas Island Fire & Rescue, and its reliance on volunteer fire fighters and off-island emergency responders to address possible worst case scenario incidents. She further noted that the Fire Chief Scott Williams “suggested” that “closer to 1,000 gpm would actually be needed in the event of equipment failure and tank farm on-site [sic].”

The applicant in this case readily acknowledges that it must meet the standard of 500 gallons per minute for 60 minutes from the fire hydrant required to be installed. The applicant has agreed to install a hydrant on the corner of Seaview Street and Aeroview Lane to fulfill the hydrant distance minimums outlined in SJCC 13.08.060. But if the hearing examiner’s conclusions are meant to require that these standards must be demonstrated and constructed, as the case may be, before a conditional use permit can be granted, then the hearing examiner is “putting the cart before the horse,” as it were. It is, of course, necessary that permit approval be conditioned on meeting county code requirements, but it is not reasonable to suggest that the applicant actually install a new fire hydrant and show the necessary flow before the permit can be granted. Such conditions would be unnecessarily burdensome to the applicant. (See *Gerla v. Tacoma*, 12 Wn. App. 883, 889, 533 P.2d 416 (1975).)

As far as Fire Chief Williams’s suggestions are concerned, the hearing examiner should not be basing conclusions of law on suggestions. Rather, conclusions should be based on factual evidence. The key factual evidence in this case was provided primarily by Inter Island’s expert, Arch Hudelson, Products & Applications Manager for the Western Region of Meeder Ransome, an LP-Gas equipment and manufacturing company. Mr. Hudelson answered the concerns raised by the Fire Chief in his written submissions and testimony to the hearing examiner. In his post-hearing memorandum dated July 31, 2017, addressing Chief Williams’s concerns, Mr. Hudelson stated that Inter Island would expand on propane safety “and beyond the singular attention expressed to water application alone.” He then states:

Before we begin, unless active transfer of propane is transpiring, ALL primary valves are to remain closed!

The first item inserted into vessel openings for transfer of propane liquid or vapor in or out of the tank, is a pneumatically operated internal valve. If the flow of product out of the tank is too rapid, the excess flow poppet will

close off the flow. Secondly, if this valve is subjected to thermal exposure and is in the open position, National Fire Protection Association Standards require the nitrogen pressure to be discharged which causes the valve to close. These valves are spring-loaded, both externally and internally to "Fail" to the closed position. These valves must close when subjected to 250 degrees or less, of thermal impact. Primary closure of all these valves are accomplished by pushing one Emergency Stop control button on the pneumatic switch. It was mentioned that responding Fire Fighters may not have to expertise to "Repair" a leak. They don't have to, all they have to do is push one button that is located within 15 lineal feet of the fuel transfer bulkhead. If a thermal event is occurring with a vehicle at this fuel transfer bulkhead, there is a second Emergency Stop control button located at least 25 lineal feet away, but less than 100 feet in distance. This particular facility will have that second Emergency Stop located 65 feet from the bulkhead area, thus keeping Fire Responders back away from directly approaching the area.

Mr. Hudelson noted that these are the so-called "redundant fail-safe product control" measures set forth in the National Fire Protection Association Pamphlet 58, which he characterized as the gold standard for propane safety. He further stated that the tank in question would incorporate an automatic valve closure should a driver attempt to drive away while the hoses are connected, and that Inter Island's delivery trucks incorporate air-brake interlocks that automatically set the truck brakes when the hoses are connected and render them immobile until the hoses are disconnected.

Mr. Hudelson further stated that in order to maintain structural integrity of the storage vessel shell and prevent flammable product release, thermal coatings can be applied to provide a two-hour fire rating and allow available water resources to be used for other tasks than maintaining structural integrity of the propane storage vessel.

Dave Robinson of Gibsons Gas also spoke on behalf of the applicant. Mr. Robinson noted that "there's never been any such thing as a 30,000 gallon tank splitting open and dumping 30,000 gallons of propane on the ground. A breach normally would come in the form of a split hose or a blocked internal or something along that nature where you're never going to have to worry about containing the liquid intelf. It's going to be vapor." (Transcript of public hearing, July 13, 2017, at 62-63.) He pointed out that the propane from any spill would likely be dissipated into the atmosphere. He further stated:

The hydro systems, the water suppression systems that are on some bulk -- bulk tanks, there's a lot of controversy surrounding that. If there is a breach, the worst thing you can do is spray water on it. And that's all we've heard is spray water, spray water, spray water. The reason that is, propane boils at minus 44 degrees. If you spray water on it you create a big ball of ice. Now you

can't fix the break. So the water suppression systems that are required at some areas are -- are merely county code and not usually directed from a safety standpoint of the application. (Id., at 63.)

The evidence from Mr. Hudelson and Mr. Robinson is un rebutted in the record. Furthermore, the court has the authority to independently review un rebutted written documents, such as their submissions to the hearing examiner. *Lobdell, supra*. The hearing examiner referred to their evidence in her findings,² but inexplicably ignored these findings in her conclusions. On the other hand, the suggestions and recommendations that water for fire suppression should be supplied beyond that which is required by the county code are not supported by factual evidence in the record. The hearing examiner's conclusions in this regard are clearly erroneous.

3.(b)2) *The applicant proved that an emergency evacuation route is available.*

The court next turns to the conclusion that the applicant has not proven that a satisfactory emergency evacuation route can be provided. In this regard, the hearing examiner noted in her "findings" that the Eastsound Planning Review Committee (EPRC), Mr. Kamin, and members of the public had expressed concerns about emergency access and emergency evacuation. The hearing examiner concluded that the applicant had failed to identify an emergency evacuation route, and that therefore the applicant had failed to demonstrate compliance with the third of the conditional use criteria, i.e., "the proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval."

Again, the record as a whole shows that the hearing examiner's conclusion in this regard is clearly erroneous. Conclusions of law should not be based on concerns, but rather on the application of legal principles to hard evidence. The county staff report dated July 25, 2017, includes a letter from Fire Chief Williams which explains the fire department's approach in the event of an emergency, i.e., use of the reverse 911 system and door-to-door fire department member response, and use of private roads and egress points to facilitate evacuation. In a letter to Planner Thompson dated July 18, 2017, Fire Marshall Myers states:

In the event of an emergency in which the Fire District closes Seaview Street adjacent to the project site, emergency egress, via vehicle, would be available from the residences in the vicinity. Egress would be to the north and the east of the proposed site using private drives, entering onto port property, and crossing the airport in Eastsound. The airport would need to be closed in order to facilitate emergency egress if Seaview Street is closed.

The staff report also includes a letter dated September 7, 2017, from Anthony Simpson, airport manager for the Port of Orcas, which confirms that in the event of an unforeseen emergency, the Port would assist its neighbors as needed with providing an evacuation route through its

² See, e.g., Findings 23, 24 and 25.

property, though he stated that the airport would not grant an “a priori” easement to ingress or egress across Port property.

Thus, the record as a whole shows that an emergency evacuation route was, in fact, identified. Moreover, as noted previously, the chance of a major fire occurring at the site in question is extremely low, thereby substantially lessening the need for an evacuation route that would somehow be better than that which would actually be used in the event of an emergency. Once again, it would be unnecessarily burdensome on the applicant to require some additional evacuation route beyond that which the applicant has shown is available. *Gerla, supra*, at 889.

3.(b)(3) *The applicant proved that the proposed project is compatible with the Orcas Island Airport.*

As far as the alleged incompatibility of the proposed project with the Orcas Island Airport is concerned, this issue is resolved by examining the zoning of the property itself. The property is located with the Eastsound Subarea Plan with a *Service Light and Industrial land use designation*. Among the purposes of this land use designation are the *accommodation* of commercial services and light industrial activities, to *concentrate* such uses around the airport where they have already been established, to *concentrate* such uses in a manner that will enable efficient use of the transportation system, and to *prohibit new residential development* other than residential units accessory to a commercial or industrial use located within a commercial or industrial building. Thus, the land use designation of the property presupposes that the proposed project will, in effect, be compatible with the airport. In any event, the record does not show that the proposed project will be incompatible with the airport.

4. Conclusion

Inter Island has borne its burden of proving that the hearing examiner’s denial of its application for a conditional use permit to install a bulk propane storage and distribution facility within the Eastsound Subarea Plan with a Service Light and Industrial land use designation was a clearly erroneous application of the law to the facts. This court has a definite and firm conviction that the denial of the application was mistaken. The record as a whole clearly showed that the proposal will be served by adequate facilities including fire protection, that an emergency evacuation route is available, that the proposal is compatible with the Orcas Island Airport, and that the application met all other legal requirements.

The appeal is granted, and the hearing examiner’s decision to deny the application is reversed. The court has entered its final decision ordering the county to issue the conditional use permit,

subject to the conditions set forth the county staff report dated July 3, 2017, at pages 17 and 18.

Very truly yours,

A handwritten signature in black ink that reads "Alan R. Hancock". The signature is written in a cursive style with a large, stylized "R" and "H".

Alan R. Hancock, Judge

Enclosure

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COUNTY OF SAN JUAN

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SAN JUAN COUNTY
PROSECUTING ATTORNEY

INTER ISLAND PROPANE, LLC,
Petitioner,

NO. 17-2-05158-7

v.

SAN JUAN COUNTY,
Respondent.

**FINAL ORDER AND JUDGMENT
GRANTING THE APPEAL,
REVERSING THE HEARING
EXAMINER'S DECISION, AND
ORDERING THE ISSUANCE OF A
CONDITIONAL USE PERMIT**

Petitioner Inter Island Propane, LLC, appealed the decision of Hearing Examiner Sharon A. Rice dated October 2, 2017, denying its application for conditional use permit to install a bulk propane storage and distribution facility in Eastsound, Orcas Island, San Juan County, Washington. The court held a hearing on the appeal on April 20, 2018, and heard the oral arguments of counsel. The court has reviewed the entire record in this case and the briefs of counsel. The court has issued its letter decision granting the appeal, reversing the hearing examiner's decision, and ordering respondent San Juan County to issue the conditional use permit, which is incorporated by this reference herein. NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED that petitioner's appeal is granted, the hearing examiner's decision is reversed, and San Juan County shall issue the requested conditional use permit to petitioner Inter Island Propane, LLC, subject to the conditions contained at pages 17

1 and 18 of the San Juan County Department of Community Development's Staff Report to the
2 Hearing Examiner dated July 3, 2017, as follows:

3 1. A landscaping strip at least 20 feet wide must be provided along the frontage of
4 Seaview Lane.

5 2. A landscaping strip at least 20 feet wide must be provided along the north and
6 south property lines.

7 3. The property owner and any tenant is responsible for maintenance of all
8 landscaping required by the Eastsound Subarea Plan, which shall be maintained
9 in good condition so as to present a healthy appearance. Tree limbs are not
10 allowed to extend over walkways or driveways below a height of eight feet above
11 grade.

12 4. Lighting shall comply with the standards in SJCC 18.60.170.

13 5. No retail sales or services are allowed on site.

14 6. No use shall be made of equipment or material which produces unreasonable
15 vibration, noise, dust, smoke, odor, or electrical interference to the detriment of
16 adjoining property.

17 7. Fire Marshal conditions:

18 1) Prior to any construction activities on the site, the following is required:

19 a) A building permit that includes construction plans for the foundation
20 and the container shall be submitted and approved by the Department
21 of Community Development.

22 b) An operational fire permit is required to be submitted to and approved
23 by the Fire Marshal for the Bulk Plant. A written operations and
24 maintenance manual (O&M) meeting the requirements of NFPA 58
25 Chapter 14 shall be submitted to the Fire Marshal's Office prior to an
operational permit being issued. The O&M requirements include Fire
Response.

c) Installation of the container, the container specifications and valves,
filling station, and equipment on trucks utilizing the site shall meet the
requirements of National Fire Protection Association (NFPA) 58 and
the IFC.

2) The container shall meet the setbacks from property lines and public ways
per IFC Table 6104.3. A 30,000 gallon container is required to be setback
at least 50 feet from property lines and public ways per IFC Table 6104.3.

3) A designated fire truck turn-around/fire lane must be provided on site.

4) Bollards or other approved collision prevention devices must be installed
in compliance with NFPA 58 and the IFC.

5) Prior to occupancy, a Fire and Life Safety Inspection is required. This will
be conducted after or concurrently with acceptance testing of the site in the
presence of the Fire Marshal and a designee of the Orcas Island Fire and
Rescue Fire Chief.

6) Prior to occupancy, hydrants shall be installed meeting the requirements
of SJCC 13.08 including:

1 a) A hydrant installed on the corner of Seaview and Aeroview to fulfill the
2 hydrant distance minimums outlined in SJCC 13.08.080.

3 b) The hydrant must be tested and demonstrate that it can meet the
4 commercial hydrant flow for this site per SJCC 13.08.010 which is 500
5 gallons per minute for 60 minutes.

6 7) If the property is to be gated or fenced, a Knox key box system shall be
7 installed allowing firefighters access to the site.

8 8. Development authorized by this permit shall be completed within five years from
9 the date of permit approval or the permit shall become null and void. An
10 extension of up to one year may be granted by the decision making authority if
11 the permittee demonstrates good cause for an extension.
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DATED: April 30, 2018


ALAN R. HANCOCK, Judge

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SAN JUAN COUNTY
PROSECUTING ATTORNEY

COURT OF WASHINGTON
FOR SAN JUAN COUNTY

INTER ISLAND PROPANE, LLC,
Plaintiff,

and

SAN JUAN COUNTY,
Defendant.

NO. 17-2-05158-7

DECLARATION OF MAILING
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I certify under the penalty of perjury under the laws of the state of Washington that on May 1, 2018 I deposited in the U.S. mail, postage prepaid, a copy of the following:


Court's Decision on LUPA Appeal, and Final Order and Judgment Granting the Appeal, Reversing the Hearing Examiner's Decision, and Ordering the Issuance of a Conditional Use Permit.

addressed to the Plaintiff Defendant at the last known address:

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Deputy Prosecuting Attorney
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Signed on May 1, 2018 at Coupeville, Washington


Elizabeth Merchant

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DECLARATION OF MAILING (no mandatory form)

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