



King County

**Department of Permitting
and Environmental Review**

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**FINAL CODE INTERPRETATION
CINT18-0001 (Gerke)**

Summary & Background

Mr. Samuel A. Rodabough filed a code interpretation request on April 19, 2018 with the Department of Permitting and Environmental Review (DPER) on behalf of his clients, Robert and Susan Gerke (owners). The request concerns property at 33360 SE Redmond-Fall City Road, Fall City, WA 98024 (Tax Parcel No. 1524079003) and seeks an interpretation of P-Suffix FC-P02, Fall City Subarea Plan, Provisional I Zone, and how DPER will enforce the condition (see **bold** text below). Specifically, Mr. Rodabough is asking for clarification about the existing I-P zone reverting to a Neighborhood Business zone upon sale of the property and if the existing warehousing/storage use may be continued by a new property owner.

According to the applicant, the property has been used for the “storage of RVs, boats, and other similar items of personal property” since at least December 1995 (the date the property was purchased by the Gerkes). The letter states the use has operated uninterrupted since that time and the applicant now seeks written confirmation that the warehousing/storage use can continue upon sale of the property. P-Suffix FC-P02 requires that **“the onsite storage would be that as of today (June 2000, added) which would be uses such as boats, trailers or tractors and. . .if the ownership changes the uses would revert to the Neighborhood Business (NB) zone.”** The Gerkes desire to sell the property but the P-Suffix condition language has posed a barrier to potential buyers who want assurances that the existing land use can remain as a legal use.

King County Ordinance No. 13875 proposed to adopt the Fall City Subarea Plan, including a reclassification of the Gerke parcel from A-10 (Agriculture, minimum lot size of 10 acres) to NB (Neighborhood Business). As Mr. Rodabough summarizes in his letter, during the June 12, 2000 County Council meeting where Ordinance No. 13875 was deliberated, Councilmember Irons made a motion to amend the subarea plan to change the zoning of the Gerke parcel to an I (Industrial) zone with two special conditions (as stated above). (Also see Amendment Z-4(b) to Ordinance No. 13875.) The Iron’s amendment was approved, the zoning was changed to I (with a P-Suffix condition added), and the parcel has retained this zone to-date. There are no indications in the motion and/or minutes from the June 2000 hearing that the County Council viewed the storage use as either illegal or nonconforming. Councilmember Iron’s amendment seems to acknowledge the fact that the storage land use was pre-existing to the Fall City Subarea Plan and could continue under the Industrial zone.

The code interpretation submittal included the following:

- a letter explaining the subject property's land use, background to the P-Suffix condition, prior meetings with DPER staff and nonconforming use provisions;
- a copy of the King County Assessor profile of the Gerke parcel;
- a copy of P-Suffix No. FC-P02; and
- a copy of selected portions of Ordinance No. 13875 (June 2000) adopting the Fall City Subarea Plan and amending the plan with the P-Suffix condition that is the topic of this interpretation.

Discussion & Analysis

In order to interpret and enforce the P-Suffix condition, three relevant and underlying points should be made. First, the P-Suffix condition that onsite storage must be limited to what it was at the time of the amendment (e.g. boats, trailers, tractors) appears to have been met. DPER has no record of any code violations or complaints on the parcel and the field storage use has been continuous (supported by historic aerial images of the site that show on-site storage).

Second, staff finds that Standard Industrial Classification ("SIC") Category No. 4225, General Warehousing and Storage, is the most accurate classification for the Gerke parcel's current use. The SIC 422 Industry Group is Public Warehousing and Storage and this SIC Group is specifically referenced in K.C.C. 21A.06.1375 as part of the "warehousing and wholesale trade" definition. Businesses categorized as SIC 4225 would, therefore, be a permitted land use in the current Industrial zone but would become legal nonconforming if the zoning changed to Neighborhood Business (as called for in Amendment Z-4(b) to Ordinance 13875). It should also be noted here that all of the parcels that were zoned NB as part of the Fall City Subarea Plan in 2000 were subsequently rezoned to CB (Community Business). Fall City Rural Town has no NB-zoned parcels today.

Third, DPER has no formal mechanism to monitor property sales other than the Assessor web site, which is typically updated weeks after a transaction is finalized. The absence of any such tracking tool presents a significant challenge to enforcing the P-Suffix condition since the required trigger in the condition is an ownership change of the parcel.

Decision

The application requests a Code Interpretation on two specific questions:

- Per Ordinance No. 13875, if the Gerke Property is sold to a third-party, will the zoning thereof automatically revert to the Neighborhood Business zone?
- If so, may the existing use of the Gerke Property for the warehousing/storage of RVs, boats, and other similar items of personal property be continued by any new purchaser(s) as a nonconforming use under chapter 21A.32 RCW?

Regarding the first question, since King County has no legal mechanism to rezone property or to change the permitted uses of a parcel based solely on a change of ownership (or to have such changes occur “automatically”), this determination is that the I-P zoning would remain in place upon a change of ownership and would not automatically revert to the NB zone.

Regarding the second question, since the I-P zoning would continue to be effective and since the use would qualify as a legal nonconforming use under K.C.C. 21A.32.025 if the property was rezoned, the determination of this code interpretation is that the existing storage land use could be continued by a new owner. If the use changes from a legal to a nonconforming use, the terms of K.C.C. 21A.32 would apply, including the requirement that the use not be expanded and any modifications are approved by the Department of Permitting and Environmental Review. This Code Interpretation does not change or amend P-Suffix condition FC-P02 in any manner, including the intent to ultimately have NB uses. Industrial land uses other than SIC 4225 are not permitted.

Finality of Code Interpretations

Under K.C.C. 2.100.050.A, the director’s decision on a code interpretation is final. A code interpretation issues by the director governs all staff review and decisions unless withdrawn or modified by the director or modified or reversed on appeal by the King County Hearing Examiner, King County Council or an adjudicatory body (K.C.C. 2.100.040.H).



Jim Chan
Interim Director
Department of Permitting and Environmental Review



Date

