

May 6, 1996

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

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DECISION ON APPEAL OF DENIAL OF REQUEST FOR RATE ADJUSTMENT

SUBJECT: King County Surface Water Management Program Service Charge

Department of Natural Resources, Surface Water Management Division File No. SWM95001B

K & S ASSOCIATES
Rate Adjustment Appeal
Tax Parcel Nos. 152605-9024 and -9005

Location: 16218 Woodinville Road, Woodinville, Washington

SUMMARY OF RECOMMENDATIONS AND DECISION:

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

PRELIMINARY REPORT:

The Surface Water Management Division's Preliminary Report on Item No. SWM95001B was received by the Examiner on April 9, 1996.

PUBLIC HEARING:

After reviewing the Surface Water Management Division's Preliminary Report and examining available information on file with the appeal, the Examiner conducted a public hearing on the subject as follows:

Following a Pre-Hearing Conference held on September 11, 1995, the public hearing on this appeal was opened concurrently with the hearings on King County's Surface Water Management Division's file Nos. SWM95001A and SWM95001C on April 23, 1996. The hearing was opened by the Examiner at 9:15 a.m., April 23, 1996, in Hearing Room No. 2, Department of Development and Environmental Services, 3600 - 136th Place Southeast, Bellevue, Washington, and adjourned at 10:50 a.m.

The hearing was continued for administrative purposes to enable the parties to enter into the record documentation showing jurisdiction of the King County Hearing Examiner to conduct this hearing on behalf of the City of Woodinville. On April 24, 1996, the Examiner received an executed copy of an interlocal agreement between King County and the City of Woodinville, indicating the requisite grant of authority. Said agreement is entered into the record as Exhibit No. 5. On April 25, 1996, the Examiner declared the record of the hearing to be closed.

Participants at the public hearing 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.

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

FINDINGS:

1. The subject property is now merged into a single assessor's parcel numbered 152604-9005. It consists of approximately 8 acres lying between the Burlington Northern RR right-of-way [paralleling the Woodinville-Redmond Road (SR 202)], and the Sammamish River. The property was developed for its present use as a business park in 1989. Virtually the entire area of the property is developed with impermeable surfaces, consisting primarily of buildings, internal vehicle circulation, and parking areas.

The King County Surface Water Management Program provides a method for financing a comprehensive approach to surface and storm water problems within King County. Fees are charged to the owners of developed real property, based primarily upon the extent of impermeable surface, the primary contributor to surface and storm water runoff.

For ease of administration, a property classification system was established by ordinance. Specific rates per

parcel and rates per acre were adopted, based upon the property classification. See KCC 9.08.070. Rate adjustments may be made by the Director of the Department of Natural Resources or the Director's designee, upon application to the Surface Water Management Division. One or more of the specific conditions set forth in KCC 9.08.080 must be found to exist for a rate adjustment to be approved.

2. On October 4, 1994, the agent of K & S Associates filed with the King County Surface Water Management Division a request for rate adjustment, based upon the assertion that the subject property is served by a retention/detention system required by King County Code, Chapter 9.04 (or can be shown to meet conditions of Chapter 9.04) and that the facility is maintained at the owner's expense to standards set by King County. The owner's agent asserted that appropriate credit had not been given for the existing retention/detention facility, and that the ordinance establishing the Surface Water Management Program, "is facially invalid as being a tax, not a fee, which is beyond the authority of King County." Exhibit No. 4C.
3. The subject property is situated so as to enable it to discharge surface water runoff directly into the Sammamish River. King County ordinances and surface water drainage requirements in effect at the time of development of the property, and currently, permit the discharge of surface water into the Sammamish River without retention/detention. Water quality control facilities are required, however. The development plans approved by the Surface Water Management Division for the subject property in 1989 required installation of an oil/water separator, biofiltration swale, and trash rack to protect the quality of water entering the Sammamish River. However, retention or detention facilities were neither required nor installed.

The engineering plans for development of the site correctly labeled the biofiltration swale as such. Exhibit No. 2. A subsequent survey, completed by a professional land surveyor in 1991, mislabeled the swale as a "retention pond." Exhibit No. 3.

A biofiltration swale incidentally detains surface water runoff while it travels through the swale to the point of discharge. Swales are designed to move water at a slower velocity than pipe or standard ditches, to enable the biofiltration process to accomplish its purpose. However, the standards for retention/detention systems are not approached, and common engineering parlance does not encompass a swale within the meaning of a retention/detention facility.

4. The area within which the subject property is situated was annexed to the City of Woodinville on April 1, 1993. King County and the City of Woodinville have entered into an interlocal agreement whereby the county has agreed to provide to the city surface water management program services, including the collection of revenues and the conduct of hearings using King County's Hearing Examiner if specifically requested by the City. The City of Woodinville has requested the King County Hearing Examiner to conduct this hearing on its behalf, granting legal jurisdiction to the King County Hearing Examiner to allow his decision making authority to apply within the City. Exhibit No. 5.
5. The Appellant did not provide any evidence or citations to support the contention that the King County Surface Water Management Program fees constitute a tax, rather than a charge for services.

CONCLUSIONS:

1. The King County Hearing Examiner has jurisdiction to consider this appeal and make a decision thereon on behalf of King County and the City of Woodinville.
2. The subject parcel is not served by a retention/detention facility required pursuant to King County Code, Chapter 9.04. The preponderance of the evidence indicates that detention/retention of surface and storm water does not occur on the property to the standards set forth in King County Code, Chapter 9.04. Consequently, the property owner is not entitled to a reduction in rate on the ground authorized by KCC 9.08.080.B.5.
3. The Appellant failed to demonstrate by evidence or argument that the King County Surface Water Management Program fee is a tax, or that the said fee is facially invalid for any reason.

DECISION:

The appeal by K & S Associates, L.P. is DENIED.

ORDERED this 6th day of May, 1996.

James N. O'Connor
King County Hearing Examiner

TRANSMITTED this 6th day of May, 1996, to the following parties and interested persons:

Harley Hoppe Harley Hoppe and Associates 12826 SE 40th Lane, Suite 203 Bellevue, WA 98006	K & S Associates 16120 Woodinville-Redmond Road NE Woodinville, WA 98072
Russel Austin, Jr. 13032 Robinhood Lane Snohomish, WA 98290	Ed Sparks 12826 SE 40th Lane #201 Bellevue, WA 98006
Ann Schuster Schuster Family Ltd. P.O. Box 627 Woodinville, WA 98072	Spieker Properties 915 - 118th Avenue SE Bellevue, WA 98009
Wayne Tanaka City of Woodinville 13203 Northeast 175th Street Woodinville, WA 98072	Joe Meneghini City of Woodinville 13203 Northeast 175th Street Woodinville, WA 98072

Virginia Kirk, Senior Deputy Prosecuting Attorney, Civil Division
Richard Rice, Dept. of Nat. Res., Surface Water Management Division
Pam Bissonette, Director, Department of Natural Resources
Jim Kramer, Dept. of Nat. Res., Surface Water Management Division
Ken Guy, Assistant Manager, Surface Water Management Division
Steve Oien, Manager, Finance & Administration, Sur. Water Manag.
Cliff Peterson, Council Coordinator, Metro. King County Council
Susan Thomas, Dept. of Nat. Res., Surface Water Management Division
Kelly Whiting, Dept. of Nat. Res., Surface Water Management Division
Brian Sleight, Dept. of Nat. Res., Surface Water Management Division

NOTICE OF RIGHT TO APPEAL

The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are commenced in Superior Court within the time provided by law.

MINUTES OF THE APRIL 23, 1996, PUBLIC HEARING ON DEPARTMENT OF NATURAL RESOURCES, SURFACE WATER MANAGEMENT DIVISION FILE NO. SWM95001B - K & S ASSOCIATES:

James N. O'Connor was the Hearing Examiner in this matter. Participating at the hearing were Russell Austin, Ed Sparks, Wayne Tanaka, Virginia Kirk, and Kelly Whiting.

On April 23, 1996, the following exhibits were offered and entered into the record:

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| Exhibit No. 1 | Photographs presented by James Austin, Attorney for K & S Associates, identified by Ed Sparks, property manager for K & S Associates, as follows:
1A view of biofiltration swale
1B water entering swale
1C oil/water separator
1D access point to retention tank |
| Exhibit No. 2 | K & S Business Park plan drawing, entered by James Austin, with relevant points identified by Ed Sparks |
| Exhibit No. 3 | K & S Business Park survey map, entered by James Austin, with relevant points identified by Ed Sparks |
| Exhibit No. 4 | Department of Natural Resources, King County Surface Water Management Division's staff report, prepared for the April 23, 1996 hearing, with attachments
A. KCC 9.08
B. Rate Adjustment Request/Spieker/6-14-94
C. Rate Adjustment Request/K&S/10-3-94
D. Aerial Photograph/Spieker
E. Site Photographs/Spieker
F. Copy of Assessor's Map/Spieker
G. Aerial Photograph/K&S
H. Site Photographs/K&S
I. Copy of Assessor's Map/K&S
J. SWM letter, to K&S, dated 10-14-94
K. K&S letter, to SWM, dated 2-28-95
L. SWM letter, to Spieker, dated 10-31-94
M. Spieker letter, to SWM, dated 2-9-95
N. SWM letter, to Spieker, dated 3-3-95
O. SWM letter, to Spieker/K&S, dated 7-6-95
P. Letter of Appeal, Spieker/K&S, 7-19-95
Q. Pre-Hearing Conference Notice, 8-11-95
R. SWM Engineer's Report, Spieker, 4-4-96
S. SWM Engineer's Report, K & S, 4-4-96 |

On April 24, 1996, the following exhibit was offered and entered into the record:

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| Exhibit No. 5 | Copy of signed interlocal agreement, between King County and the City of Woodinville, dated April 19, 1996, with cover letter from Bruce Bennett, Surface Water Management Division, dated April 22, 1996 |
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