

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON**

RESOLUTION NO. 2015-123

**A RESOLUTION REMANDING THE DECISION OF ADMINISTRATIVE
CONDITIONAL USE ACU-14-00005 BACK TO THE COMMUNITY DEVELOPMENT
SERVICES DIRECTOR FOR FURTHER REVIEW**

- WHEREAS,** Community Development Services (CDS) issued a State Environmental Policy Act (SEPA) determination and an Administrative Conditional Use Permit (ACUP) to Mr. McDonald for a marijuana growing and processing operation; and
- WHEREAS,** timely appeals were filed of both the SEPA determination and the issuance of the ACUP; and
- WHEREAS,** after due notice, briefing, and hearing, the BOCC upheld the issuance of the SEPA determination and remanded the issuance of the ACUP for determination if the application meets county standards for provision of water under Ch. 13.35 KCC and review of whether the application meets the criteria set forth in Ch. 69.50 RCW and Ch. 314.55 WAC – specifically whether the operation of Mr. McDonald is within 1,000 feet of a school.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The BOCC finds that McDonald filed a pair of building permits in 2014, neither of which were ever appealed and so are now legally beyond challenge.
2. The BOCC finds these building permits for a fence requested information as to if the intended use was for an I-502 enterprise, and that the applicant disclosed affirmatively to each.
3. The BOCC finds that these building permits and the associated disclosure of intended use vests the applicant to the regulations regarding that use at the time of the complete building application.
4. The BOCC finds that the issue of the presence or absence of a school was adequately dealt with in the MDNS mitigation conditions.
5. The BOCC finds the first seven of the appellants' challenges to the MDNS are not new information, are not specific to McDonald's operation, and were adequately considered

and dealt with when the county made the legislative zoning decision that McDonald is vested to.

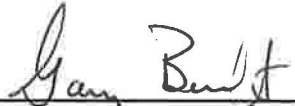
6. The BOCC finds the typo in the notice of SEPA decision of no legal import, especially since the appellants were able to make a proper and timely appeal.
7. The BOCC finds the process for SEPA was correctly administered – there was no need for a second comment period because plenty of comment was received, none of that comment was new information, none of that comment was specific to McDonald’s proposed operation, and no second comment period is statutorily required.
8. There also was no statutory requirement for the county to list proposed conditions because it was initially considering issuing a DNS instead on an MDNS.
9. The BOCC finds the checklist was adequately filled out.
10. The BOCC finds the SEPA mitigations adequate.
11. The BOCC unanimously denied the SEPA appeal.
12. The BOCC finds that the building permits vested McDonald to disclosed uses.
13. The BOCC finds that any irregularity as to the issuance of the building permits is now irrelevant because they were never appealed and are now unchallengeable and legally valid.
14. The BOCC finds that the McDonald ACUP is desirable and essential to the public as required under KCC 17.60A.015(1).
15. The BOCC finds that the McDonald ACUP is not detrimental to the public as required under KCC 17.60A.015(2)(a).
16. The BOCC finds that the McDonald ACUP is not an economic burden upon the public, there is no evidence of detriment as to this operation as required under KCC 17.60A.015(2)(b).
17. The BOCC finds that it has independent authority to determine compliance with Ch. 69.50 RCW and Ch. 314.55 WAC as an exercise of its zoning authority and apart from merely recognizing the issuance of a license by the Liquor and Cannabis Board.
18. The BOCC finds that it was not demonstrated, as required by KCC 17.60A.015(3), how the McDonald ACUP met the development standards of Kittitas County Code, specifically (1) how there was adequate provision for water under Ch. 13.35 KCC and (2) how, under an independent county review, the applicant met the requirements of Ch. 69.50 RCW and Ch. 314.55 WAC concerning proximity to a school.

19. The BOCC makes no findings as to the other conditional use permit criteria in KCC 17.60A.015.
20. The BOCC therefore remanded the ACUP to CDS for further review as to how the ACUP satisfied SEPA conditions 1 and 8 and how the ACUP satisfied county code requirements for provision of water and the county's independent review of compliance with Ch. 69.50 RCW and Ch. 314.55 WAC.


NOW, THEREFORE BE IT RESOLVED AND IT IS HEREBY ORDERED, that (1) the SEPA appeal is denied, and (2) the appeal of ACU-14-00005 is granted and this matter is remanded to the CDS Director for further review consistent with this Resolution.

ADOPTED this 15th day of September, 2015.

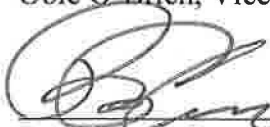
**BOARD OF COUNTY COMMISSIONERS
KITITAS COUNTY, WASHINGTON**



Gary Berndt, Chairman



Obie O'Brien, Vice-Chairman



Paul Jewell, Commissioner



APPROVED AS TO FORM:

Deputy Prosecuting Attorney