

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

RESOLUTION NO. 2015-_____

A Resolution Remanding the Decision of Administrative Conditional Use ACU 14-00005 to the Community Development Director for Further Review

WHEREAS, the Kittitas County Department of Community Development Services did receive application to produce and process marijuana from a TJ McDonald on October 29, 2014 for processing, and the application was deemed complete on November 25, 2014 and issued notice of application ; and

WHEREAS, Kittitas County and other agencies proceeded to review the SEPA checklist, and upon review subsequently issued a mitigated determination of non-significance on April 9, 2015 ; and

WHEREAS, Appeal was filed on April 22, 2015 to the threshold determination, requesting the Board of County Commissioners to reverse the determination and consider further environmental impacts and the completeness of the checklist; and

WHEREAS, After review of the proposed project and the criteria for approving a conditional use permit as outlined in KCC 17.60A.015, the Director did approve the ACU on April 22, 2015, indicating that the applicant in the proposal application met all conditions for a conditional use permit; and

WHEREAS, An appeal was filed on May 5, 2015 indicating that the application did not vest to the Code that existed prior to December 2, 2014 when marijuana production and processing was permitted in a Commercial Agriculture zone, which is the classification of the land; and

WHEREAS, An appeal was filed on May 5, 2015 indicating that all of the criteria necessary for approval of a conditional use permit were not met, and that the Director's decision should be reversed by the Board of County Commissioners; and

WHEREAS, Public Hearing was held before the Board of County Commissioners on July 29, 2015 to hear briefs from the appellant, the applicant, and the County presenting their positions on the decision; and

WHEREAS, Public hearing was continued to August 11, 2015 to consider the arguments presented and to ask questions of the representatives of the applicant, appellant and the County; and

WHEREAS, Deliberations began on August 11, 2015 regarding the SEPA appeal and the BOCC determined that the SEPA MDNS threshold determination was issued correctly; and

WHEREAS, Deliberations were continued on August 18, 2015 to discuss the appellant's vesting argument, and determined that because no appeal to the building permit for a fence was filed within twenty-one (21) days following issuance of the permit, the activity was vested; and

WHEREAS, Deliberation continued on August 18, 2015 to discuss the proposal meeting the criteria in KCC 17.60A.015 and determined that some of the criteria were not adequately addressed and should have further consideration; and

WHEREAS, The BOCC by a vote of 2-1 voted to remand the application for an administrative conditional use permit to the staff for further consideration for adequacy of SEPA conditions I and VIII within the decision, for consideration of compliance to KCC 13.35, for consideration in meeting KCC 17.15.050 (1), 17.604.015 (3), and Ordinance 14-0004.

DISCUSSION

1. The conditional use permit approval does not meet criteria required by KCC 17.60A.015 (3) because as stated in KCC 17.15.050.1, footnote 29 states: Marijuana production or processing on non-conforming lots of record must be at least 10 acres in size, are processed as an Administrative Conditional Use Permit and must:
 - a) meet all criteria and regulations found in WAC 315.55 and RCW 69.50, and
 - g) obtain water from a water budget neutral source and prove such by providing
 - 1) a letter from a purveyor stating that the purveyor has adequate water rights and will provide the necessary water for the applicant's project, 2) an adequate water right for the proposed project; or 3) a certificate of

water budget neutrality from the Department of Ecology or other adequate interest in water rights from a water bank.

2. The language in footnote 29 is clear and unambiguous in that it requires an independent compliance evaluation by the County, not simply a deferral to a licensing decision by the WSLCB as the County has suggested. In this case, evidence has been presented that an elementary and/or secondary school exists within 1000 feet of the applicant. Clearly, this violates the plain language in RCW 69.50.331(8). WAC 314-55 further defines the meaning of elementary and secondary school for licensing decisions by the WSLCB. However, that definition does not release the County of its own obligations under footnote 29 which requires specific compliance with both the RCW and the WAC. The County could have written the requirement only to assure a license was issued by WSLCB. It did not. An independent review of compliance with RCW 69.50 and WAC 314.55 is therefore required and that review was clearly not performed in this case.
3. The County stated in testimony that the review by this Board is outside its authority by considering compliance with RCW and WAC, and pondering an apparent contradiction in the meaning and intent of elementary and secondary school. The Board disagrees. The County specifically adopted compliance requirements with all the criteria and regulations found in the WAC and the RCW as part of its zoning regulations. Clearly, a valid license is part of that, but it's not the only requirement.
4. The applicant suggests that such a review is in effect, the County over-riding the decision of the WSLCB. The Board disagrees since the WSLCB review is for the issuance of license and the County's review is specific to land use and zoning regulation compliance.
5. County suggests that if the County decides that after the State issues a license for marijuana production and processing at a specific location that the County would not allow it, that decision would be incongruous with state law. The Board disagrees. The County is provided broad authority for zoning and land use regulations within its borders. We concurrently already knew of and are pursuing code enforcement on existing marijuana production facilities which were also issued licenses by the State, but which do not meet County zoning regulations. The County was informed by the LCB that they would not be enforcing local zoning codes by withholding licenses, including those that outright prohibit its production.

6. The applicant has not provided a letter from a water purveyor and therefore does not meet footnote 29, item (3). There are hares of Ellensburg Water Company which are claimed to be available to the applicant for operation, but the Board questions the use of this water use for irrigating marijuana. Clear evidence exists showing that water from Federal irrigation projects is prohibited for use in marijuana production. Enforcement may be lacking at this time, but who is to say that won't change.

7. KCC 13.35.020 states that an adequate water supply determination is required of all persons who are making applications for land uses that require water, including conditional uses. What has been presented here cannot be considered adequate water. Some hauling of water has been discussed, but lacks specificity. In addition the CUP applicant and staff states that bottled water will be supplied for permanently domestic use. Nowhere in the County Code is that option. Only in KCC 13.25 is there allowance for cistern water for domestic use, but specifically disallows water hauling or cistern for any commercial use. Therefore, what is presented in the ACU case as adequate water for the production of marijuana is not adequate and the water for domestic use does not meet any acceptable County standard.

NOW, THEREFORE, BE IT RESOLVED AND IT IS HEREBY ORDERED, that ACU 14-00005 be remanded to the Community Development Director for further review related to the issues as presented above.

ADOPTED this 1st day of September, 2015

**BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON**

Gary Berndt, Chairman

Obie O'Brien, Vice-Chairman

Paul Jewell, Commissioner

ATTEST
CLERK OF THE BOARD

Julie A. Kjorsvik

APPROVED AS TO FORM:

Neil Caulkins,
Deputy Prosecuting Attorney