

## SHALLBETTER LAW

3201 Airport Rd.  
Cle Elum, WA 98922  
Dir: (509) 674-3836

www.shallbetterlaw.com  
traci@shallbetterlaw.com

PUGET SOUND    NORTHERN CASCADES    KITTITAS COUNTY    CENTRAL WASHINGTON    EASTERN WASHINGTON

May 28, 2013

✓ Ms. Lindsey Ozbolt  
Kittitas County CDS  
411 North Ruby, Ste 2  
Ellensburg, WA 98926



Mr. Neil Caulkins  
Deputy Prosecutor  
205 W 5th AVE Suite 213  
Ellensburg WA 98926

VIA EMAIL AND FIRST CLASS MAIL

RE: Steigleder Conditional Use Permit (CU-13-0002) SEPA Appeal/Response to Appellant  
Letter dated May 24, 2013

Dear Ms. Ozbolt and Mr. Caulkins:

This letter is in response to the letter dated May 24, 2013 sent to your attention by Mr. Jeff Slothower, as attorney for Thorp Fruit & Antique Mall. In that letter, Mr. Slothower objected to the County's use of a closed record SEPA appeal process for his client's appeal of the County's SEPA threshold determination in CU-13-0002. Mr. Slothower cited the case of *Ellensburg Cement Products, Inc. v. Kittitas County*, 171 Wn.App. 691 (2012), for authority that a closed record appeal process for the SEPA threshold determination is inappropriate. He further suggested that the County should not move forward with a consolidated open record hearing on the underlying CUP and the SEPA Appeal, despite the holding in *Ellensburg Cement Products*, and, ostensibly, despite express authority under KCC 15A.04.020/Table A and KCC 15A.04.210 for an open record appeal hearing, consolidated with the hearing on the CUP.

The Applicant agrees with Mr. Slothower that an open record hearing on the SEPA appeal is appropriate, and has no objection to allowing a single consolidated open record hearing for the SEPA appeal and the CUP application. Such a consolidated open record appeal hearing would alleviate all concerns raised by Mr. Slothower in his letter, and the applicant would agree to waive all objection or rights to challenge any such consolidated open record appeal hearing based on process (i.e. holding an open record hearing as opposed to a closed record appeal hearing).

The Applicant strongly disagrees that the County should (or has authority to) suspend the consolidated open record hearing on the SEPA Appeal and the underlying CUP application which consolidated hearing has been set for July 11, 2013 at 6:00 p.m. To my knowledge, there has been no stay imposed on the holding of *Ellensburg Cement Products, Inc. v. Kittitas County*, and hence the County would be wise and compliant to follow the holding of that case—a holding



which directs a single, consolidated open record hearing of the SEPA appeal and the underlying action.

Additionally, notwithstanding the interpretation advanced by the County in *Ellensburg Cement Products*, there is authority under the express language of existing provisions of KCC 15A.04, dealing with SEPA appeals, to support a consolidated, open record hearing on the SEPA appeal and underlying CUP application. KCC 15.04.210(1)(b) expressly provides for an administrative appeal hearing on a DNS nonexempt action that requires a public hearing (i.e. a CUP) to be “combined with and heard by the reviewing body for the underlying action.” KCC 15.04.020, dealing with Appeal of SEPA actions, expressly states that the SEPA appeal shall be consolidated with the hearing on the underlying governmental action “by providing for a single simultaneous hearing before one hearing body.” Indeed, Table A of KCC 15A.04.020(5) provides for an open record hearing for “SEPA Actions: Appeals of threshold determinations.”

The only party that stands to be harmed from an open record hearing on the SEPA appeal is the Applicant, and the Applicant agrees to waive any objection or challenge to a consolidated open record hearing on the SEPA appeal. The County should allow an open record hearing on the SEPA appeal, consolidated with the open record hearing on the CUP scheduled for July 11, 2013.

Please (a) immediately (without any delay in the July 11, 2013 hearing date) adopt interim regulations as Mr. Slothower has proposed, which interim regulations expressly amend/clarify that appeals of SEPA threshold determinations are to be heard in a consolidated open record hearing with the underlying action; and/or (b) allow and proceed with a single consolidated open record appeal of the SEPA threshold determination and the CUP application on July 11, 2013 before the Hearing Examiner.

Time is of the essence on this CUP application. The applicant expressed concern and disapproval with delay of a hearing date to July 11, 2013. If the hearing and decision on the SEPA appeal and the CUP were to be delayed or suspended because of the County’s failure to properly adopt interim regulations or establish a legitimate process for a consolidated open record SEPA appeal hearing, the County would be liable for damages resulting to my client from such delay. Further delay of a hearing and decision by the County on my client’s CUP application would preclude my client from engaging in its seasonal business this year and result in damages to my client.

Again, I urge the County to (a) immediately (without any delay in the July 11, 2013 hearing date) adopt interim regulations as Mr. Slothower has proposed, which interim regulations expressly amend/clarify that appeals of SEPA threshold determinations are to be heard in a consolidated open record hearing with the underlying action; and/or (b) allow and proceed with a single consolidated open record appeal of the SEPA threshold determination and the CUP application on July 11, 2013 before the Hearing Examiner. As noted above, the applicant will waive any right it may have to challenge the holding of an open record hearing on the SEPA appeal. Allowing the open record SEPA appeal will be consistent with applicable law and satisfy the concerns raised in Mr. Slothowers’ letter.

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Sincerely,  
Shallbetter Law  
Attorney for Applicant Christman/Steiglder CUP



Traci Shallbetter

cc: Jeff Slothower (via email and first class mail)  
Robert ("Doc") Hansen (via email)

