

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

**RESOLUTION NO. 2016- 052**

**A RESOLUTION RESCINDING ADMINISTRATIVE CONDITIONAL USE PERMIT  
ACU-14-00005**

- 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, on September 15, 2015 in Resolution 2015-123, 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; and
- WHEREAS,** Appellants McDowell timely filed an appeal under the Land Use Petition Act (LUPA) which was dismissed because Resolution 2015-123 did not constitute a final land use decision for purposes of LUPA; and
- WHEREAS,** on remand, CDS found that the “school” did not meet the statutory definition of a school under Ch. 314-55 WAC and that the applicant had demonstrated adequate provision of water; and
- WHEREAS,** the BOCC held continued hearings, after due notice, on March 15<sup>th</sup> and 30<sup>th</sup>, 2016.

**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 vast majority of the arguments presented by appellants McDowell, and the material they admitted, is not specific to McDonald's operation, is instead material relating to marijuana in general that the BOCC had already considered when it made its initial zoning decisions, and so is not new information.

15. The BOCC finds that the McDonald ACUP is desirable and essential to the public as required under KCC 17.60A.015(1).
16. The BOCC finds that the McDonald ACUP is not detrimental to the public as required under KCC 17.60A.015(2)(a).
17. 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).
18. 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.
19. The BOCC finds that Kittitas County Code does not describe marijuana production or processing as agriculture.
20. The BOCC finds that, under such authority as RCW 82.04.213(3) and *Kim v. PCHB*, 115 Wn.App. 157 (2003), marijuana production and processing is considered an industrial use.
21. The BOCC finds this use requires potable water supplies as employees are expected to be onsite at times and the application discusses the need for potable water.
22. The BOCC finds that the only option for potable water in this case is a groundwater well as municipal supplies are not available and on-site storage of potable water is not allowed according to Kittitas County Code 13.25.020 for industrial purposes.
23. The BOCC finds that any use of ground water on this site for the production and processing of marijuana is considered a new use under Kittitas County Code and is required to provide adequate mitigation according to KCC 13.35.027.
24. 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, how there was adequate provision for potable (not irrigation) water for an industrial use under Ch. 13.35 KCC.
25. The BOCC finds that Ch. 314.55 WAC's provision concerning proximity to a school is satisfied because the "school" in question here does not meet the statutory definition of a school.
26. The BOCC finds that there is adequate protection for livestock, pets, and humans, no detriment to scenic views, nor an increase in crime caused by the proposed project, but because water use is not mitigated, the criteria in KCC 17.60A.015(4) are not satisfied.


27. The BOCC finds that the requirements in KCC 17.60A.015(5) are met because there is no evidence, specific to this project, of harm to livestock or increase in crime.
28. The BOCC finds that the requirements in KCC 17.60A.015(6) are satisfied and that the material and argument to the contrary is not specific to this project, but rather generally about marijuana, and is not new because the BOCC considered all of this when it established marijuana production as an administrative conditional use in the zone.
29. The BOCC finds that the requirements in KCC 17.60A.015(7) are satisfied and that the material and argument to the contrary is not specific to this project, but rather generally about marijuana, and is not new because the BOCC considered all of this when it established marijuana production as an administrative conditional use in the zone.

**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 ACU-14-00005 is hereby rescinded.

**ADOPTED** this 19<sup>th</sup> day of April, 2016.

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

  
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Obie O'Brien, Chairman

  
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Paul Jewell, Vice-Chairman

*Resigned*

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Gary Berndt, Commissioner



  
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Clerk of the Board

APPROVED AS TO FORM:

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Deputy Prosecuting Attorney