

**COMMISSIONERS' MINUTES  
KITITAS COUNTY, WASHINGTON  
COMMISSIONERS AUDITORIUM  
SPECIAL MEETING**

**WEDNESDAY**

**2:00 P.M.**

**JULY 29, 2015**

Board members present: Chairman Gary Berndt, Vice-Chairman Obie O'Brien, and Commissioner Paul Jewell.

Others: Julie Kjorsvik, Clerk of the Board; Darren Higashiyama, Operations Commander; Neil Caulkins, Deputy Prosecutor; Holly Myers, Environmental Health Supervisor; Doc Hansen, Planning Official/Interim Planning Director; Brett Wachsmith, Treasurer; Kaycee Hathaway, Staff Planner; and approximately 44 members of the public.

**PUBLIC HEARING**

**ADMINISTRATIVE APPEAL - McDONALD CUP**

**CDS**

At 2:00 p.m. **CHAIRMAN BERNDT** opened a Hearing to consider an administrative appeal of the issuance of a SEPA Mitigated Determination of Non-Significance for the McDonald Conditional Use Permit (CU-14-00005). He went over the hearing process and procedures.

**JEFF SLOTHOWER, ATTORNEY REPRESENTING THE APPELLANT** felt the public should not be allowed to speak at administrative appeal hearings and to limit the record as to what was in front of the Board. **CHAIRMAN BERNDT** read from Kittitas County Chapter 15a.07.020 - Procedures for Administrative Appeals. **COMMISSIONER JEWELL** explained it was a quasi-judicial matter and agreed the public should not be allowed to make comments at this point, as the Board has the record before them. **COMMISSIONER O'BRIEN** also felt additional public comments should not be allowed. He disclosed that he had attended social events with the applicant Mr. McDonald, but had not discussed the matters with him, although he has read newspaper articles, letters to the editor, and been involved with previous public hearings where he had testified, but had not engaged in any ex-parte communication. **DOC HANSEN, PLANNING OFFICIAL/INTERIM PLANNING DIRECTOR** said the decision making body would hear both administrative appeal items including SEPA and the Conditional Use Permit.

**JEFF SLOTHOWER, ATTORNEY REPRESENTING THE APPELLANT** reviewed the Brief he had previously submitted to the Board and explained how the proposed Conditional Use was not an allowed use in the Commercial Agriculture Zone. He described why the application cannot be vested to the rules that were in effect at the date of application, when it was deemed complete by Staff. He said the location does not comply with the County's Development Code or Comprehensive Plan; is not consistent with Federal laws and regulations because raising

marijuana is a crime which is punishable by imprisonment (under federal law); and is located within 1,000 feet of a school and playground. He also reviewed the SEPA appeal Brief including issues relating to incompatibility with timothy hay; marijuana's toxicity to livestock and pets; production results in an increase in crime; there are no tax benefits to Kittitas County and would have a negative impact to property values. He thought the SEPA Checklist contained inaccurate, misleading and incomplete information. The Board asked Mr. Slothower questions and clarification on his arguments.

At 3:41 p.m. the Board recessed for a 10-minute break.

The Board reconvened the hearing at 3:51 p.m.

**NEIL CAULKINS, DEPUTY PROSECUTOR** responded to Mr. Slothower's arguments; clarified items outlined his Brief; case law relating to vesting; how the SEPA determination was proper; the standard of review for an issuance of an Administrative Conditional Use Permit and how it meets the County standards for issuance. He noted the operator must possess the appropriate licenses from the Liquor and Cannabis Board which had been issued and was not appealed and the County has no authority over those issues. He said the SEPA determination and issuance of a Conditional Use Permit to the Old McDonalds Farm for marijuana production and processing must be affirmed. The Board asked Mr. Caulkins questions and for additional clarification on his arguments. He asked that the email from the Liquor and Cannabis Board be submitted into the record. **MR. SLOTHOWER** objected to any documents being submitted into the record. **CHAIRMAN BERNDT** ruled to not allow any additional documents into the record.

**ANN VAN LEYNSEELE, ATTORNEY REPRESENTING OLD McDONALD'S FARM, LLC** explained how the State was in a difficult learning curve right now. She claimed the Appellant's Brief is not based on fact and are beyond the scope of consideration for a SEPA determination and an Administrative Conditional Use Permit permitting process. She reviewed procedural facts and indicated marijuana is legal and compatible with timothy hay and could not be spread to other fields or harm property values. She said it contributes to tax revenues to Washington State and Kittitas County. She said the issues relating to the location of the Brethren School were irrelevant as the issue has been investigated and settled by the Washington State Liquor and Cannabis Board and they had the final determination when they issued McDonald's license. She stated they do not meet the standard as an Elementary or Secondary school and is not recognized by the State of Washington according to WAC 314-55-010(5) and (21). Ms. Van Leynseele addressed questions by the Board relating to various issues including water.

**MR. SLOTHOWER** provided rebuttal arguments and asked the Board to review the County Code relating to the specific criteria for a Conditional Use Permit. He said the County has identified certain criteria to include if the use is desirable, complies with Development Codes, etc. and how the application does not qualify because it is not an agricultural use, but rather an industrial use. He recognized the vesting issue is not bright lined and is a rather complicated legal issue.

**TJ McDONALD** said he would like to exercise the right to testify at the continued hearing.

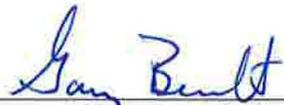
**COMMISSIONER O'BRIEN** moved to continue the hearing to August 11, 2015 at 3:00 p.m. in the Commissioners Auditorium to accept further testimony by the applicant and the appellant, but no further briefing will be allowed and it will also be for possible Board deliberation. **COMMISSIONER JEWELL** seconded. Motion carried 3-0

Meeting adjourned at 5:26 p.m.

**CLERK OF THE BOARD**

  
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Julie Kjorsvik

**KITTITAS COUNTY COMMISSIONERS  
KITTITAS COUNTY, WASHINGTON**

  
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Gary Berndt, Chairman