

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

**CONDITIONAL USE PERMIT APPEAL DISMISSAL
AND
SEPA APPEAL DENIAL**

**WEBB SMALL SCALE EVENT FACILITY
ADMINISTRATIVE CONDITIONAL USE PERMIT (CU-16-00001)**

RESOLUTION NO. 2017-_____

WHEREAS, according to Kittitas County Code Title 15A, relating to appeals and Title 17.60A Conditional Uses, an open record hearing was held by the Kittitas County Board of County Commissioners on January 17, 2017 and February 7, 2017 for the purpose of considering a SEPA appeal and Administrative Decision appeal for the conditional use permit known as the Webb Small Scale Event Facility CU-16-00001 and described as follows:

An application to obtain permission to operate a Small Scale Event Facility (8 events or less per year) on approximately 12 acres which are zoned Commercial Agriculture. The subject property is accessed off of Badger Pocket Road and located approximately 4.75 miles south of the City of Kittitas at 6280 Badger Pocket Road, in a portion of Section 36, T17N, R19E, WM in Kittitas County, bearing Assessor's map numbers 17-19-36000-0016 and 17-19-36000-0025. Proponent: Terra Design Group Inc authorized agent for Matt Webb, landowner.

WHEREAS, the applicant applied for an essentially identical use in 2012 (CU-12-00003); and,

WHEREAS, following litigation, a SEPA checklist and review was required for the 2012 application (CU-12-00003) by Kittitas County Superior Court; and,

WHEREAS, the applicant paid the application fees for and submitted a SEPA checklist (SE-13-00002) on February 8th, 2013 for that conditional use application (CU-12-00003); and,

WHEREAS, Kittitas County Community Development Services conducted a full review of the SEPA checklist (SE-13-00002) and project and determined that as proposed, the conditional use (CU-12-00003) requested would not result in any probable significant adverse environmental impacts; and,

WHEREAS, as per WAC 197-11-340 the responsible SEPA Official for Kittitas County issued a SEPA Determination of Non-Significance on March 21, 2013 for the 2012 proposed use (CU-12-00003); and,

WHEREAS, no timely appeals were filed with respect to the Determination of Non-Significance (DNS) for the 2012 application (CU-12-00003) in 2013; and,

WHEREAS, the 2012 conditional use permit application (CU-12-00003) was withdrawn on January 5, 2015; and,

WHEREAS, on December 3, 2013 the Kittitas Board of County Commissioners adopted Ordinance 2013-012 which among other things altered the definition (KCC 17.08.490), use table (17.15.050.1), permit process, and associated footnotes (17.15.050.2); with respect to small scale event facilities in the Commercial Agriculture zone; and,

WHEREAS, the same applicant, applied for another conditional use permit (CU-16-00001) under the terms of the revised small scale event facility as enacted by ordinance 2013-012; and,

WHEREAS, the applicant submitted the SEPA checklist (SE-13-00002) and DNS from the 2012 application (CU-12-00003) as part of the new application (CU-16-00001); and,

WHEREAS, the new application (CU-16-00001) was deemed complete on April 13, 2016 indicating among other things that reviewing procedures necessary to issuing a SEPA environmental threshold determination per WAC 197-11 and RCW 43.21C would occur; and,

WHEREAS, WAC 197-11-600(2) allows an agency to use previously prepared environmental documents in order to evaluate proposed actions, alternatives, or environmental documents; and,

WHEREAS, a notice of application was issued for the conditional use application (CU-16-00001) to applicable agencies, mailed to surrounding property owners, and published in the official newspaper of record as per KCC Chapter 15A.03.060.

WHEREAS, the notice of application for the conditional use permit (CU-16-00001) stipulated that the applicant had submitted a prior application (CU-12-00003); that the use for the new application (CU-16-00001) represents a diminished environmental impact; and that the county intended to utilize the provisions of WAC 197-11-600 to adopt existing documents; and,

WHEREAS, a DNS was issued for the new application (CU-16-00001) on May 24, 2016 stating that the lead agency would not act on the determination for 10 working days and that any action to set aside, enjoin, review, or otherwise challenge the administrative SEPA action on the grounds of non-compliance with the provisions of Chapter 43.21 of the Revised Code of Washington (RCW) must be commence on or before Wednesday June 8th 2016 at 5 p.m.; and,

WHEREAS, a timely appeal of the SEPA DNS was submitted and the appropriate fee paid to Kittitas County Community Development Services (CDS) on June 8, 2016 by Ritch Brownlee; and,

WHEREAS, the conditional use permit request was approved with conditions by the Director of

CDS and findings and approval documentation outlining the means and filing fee for an appeal were distributed to parties of record and published in the official newspaper of record through a notice of decision as outlined in KCC Chapter 15A.06.010 on October 10, 2016; and,

WHEREAS, a timely appeal of the conditional use permit decision (CU-16-00001) and appropriate fee was paid to the Board of County Commissioners on October 25, 2016 by Ritch Brownlee; and,

WHEREAS, RCW 43.21C.075(3)(d) provisions that “procedural determinations made by the responsible official shall be entitled to substantial weight.”; and,

WHEREAS, A decision to issue an MDNS may be reviewed under the clearly erroneous standard. See *Anderson v. Pierce County*, 86 Wash.App. 290, 302, 936 P.2d 432 (1997); and,

WHEREAS, a finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the record is left with the definite and firm conviction that a mistake has been committed. *Id.* (citing *Norway Hill Preservation & Protection Ass'n v. King County Council*, 87 Wash.2d 267, 274, 552 P.2d 674 (1976)).; and,

WHEREAS, for the MDNS to survive judicial scrutiny, the record must demonstrate that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA and that the decision to issue an MDNS was based on information sufficient to evaluate the proposal's environmental impact. *Id.* at 302, 936 P.2d 432 (citing *Pease Hill Community Group v. County of Spokane*, 62 Wash.App. 800, 810, 816 P.2d 37 (1991)).; and,

WHEREAS, a motion was made to dismiss the SEPA Appeal on the grounds that:

1. The appellant failed to demonstrate that his endangered interest fell within the zone of interest protected by SEPA; and,
2. The appellant failed to demonstrate that he has standing; that he must allege a specific and perceptible injury or harm and that they are immediate concrete, and specific; and,

WHEREAS, a motion was made to dismiss the conditional use permit appeal on the grounds that:

1. The appellant, in filing his appeal, failed to comply with section 15A.07.010(2) of the Kittitas County Code; and,
2. The appellant failed to demonstrate that he has standing; that he must allege a specific and perceptible injury or harm; and,

WHEREAS, Kittitas County Code 15A.07.010(2) states:

Appeals shall contain a written, concise statement identifying:

- a. The decision being appealed;
- b. The name and address of the appellant and his interest(s) in the matter;
- c. The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was

wrong;

d. The desired outcome or changes to the decision;

e. The appeals fee.

The appeal shall contain only the above listed material, and shall not contain or attempt to introduce new evidence, testimony, or declaration; and,

WHEREAS, an open record public hearing was held by the Board of County Commissioners on January 17, 2017 and February 7, 2017 to consider the SEPA appeal and the Conditional use permit appeal concurrently as required by KCC 15.04.210(4); and,

WHEREAS, due notice of the hearing had been given as required by law; and,

WHEREAS, the appellant, the applicant and County staff were given the opportunity to provide testimony, information, and documentation related to the appeals; and,

WHEREAS, the Kittitas County Board of Commissioners make the following FINDINGS OF FACT and CONCLUSIONS AT LAW concerning said proposed conditional use:

1. Terra Design Group Inc authorized agent for Matt Webb, landowner, submitted a conditional use application for a Small Scale Event Facility (8 events or less per year) on approximately 12 acres. The subject property is zoned Commercial Agriculture. This small scale event facility is listed in the Kittitas County land use zoning table (17.15.050.1) as an administrative conditional use for the Commercial Agriculture zone and as such requires approval of a permit as outlined in KCC 17.60A.
2. This proposal is located approximately 4.75 miles south of the City of Kittitas at 6280 Badger Pocket Road, in a portion of Section 36, T17N, R19E, WM in Kittitas County, bearing Assessor's map numbers 17-19-36000-0016 and 17-19-36000-0025.
3. The Kittitas County Comprehensive Plan's Land Use Element designates the subject property as Commercial Agriculture and the zoning for this proposal is Commercial Agriculture.
4. Kittitas County Code provides under Chapter 17.60A.015 provides review criteria for conditional use permits which states that:

The Director or Board, upon receiving a properly filed application or petition, may permit and authorize a conditional use when the following requirements have been met:

- 1) The proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood.
- 2) The proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county and that it will not create excessive public cost for facilities and services by finding that

- a) The proposed use will be adequately serviced by existing facilities such as highways, roads, police and fire protection, irrigation and drainage structures, refuse disposal, water and sewers, and schools; or
 - b) The applicant shall provide such facilities; or
 - c) The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment.
 - 3) The proposed use complies with relevant development standards and criteria for approval set forth in this title or other applicable provisions of Kittitas County Code.
 - 4) The proposed use will mitigate material impacts of the development, whether environmental or otherwise.
 - 5) The proposed use will ensure compatibility with existing neighboring land uses.
 - 6) The proposed use is consistent with the intent and character of the zoning district in which it is located.
 - 7) For conditional uses outside of Urban Growth Areas, the proposed use:
 - a) Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands;
 - b) Preserves "rural character" as defined in the Growth Management Act (RCW 36.70A.030(15));
 - c) Requires only rural government services; and
 - d) Does not compromise the long term viability of designated resource lands.
5. An Administrative conditional use permit application was submitted to Kittitas County Community Development Services (CDS) on March 16, 2016. The application was deemed complete on April 13, 2016. A Notice of Application and a Notice of SEPA were mailed to all state and local agencies/departments with potential interest in the project and required by SEPA, as well as to adjacent landowners located within five hundred (500) feet of any portion of the boundary of the proposal's tax parcel on April, 29, 2016. Notice was published in the Daily Record, the official newspaper of record for Kittitas County, on May 2, 2016.
6. The applicant applied for a similar use to Kittitas County Community Development Services (CDS) in 2012 at which time SEPA review was performed and a Determination of Non-Significance (DNS) was issued (dated October 6, 2014) and no appeals were filed. WAC 197-11-600 provisions for the adoption of existing environmental documents; Kittitas County finds that the use applied for in this instance represents a diminished environmental impact from the one originally applied for in 2012 and therefore is utilized the provisions allowed for in the citation above to adopt the existing SEPA checklist. A DNS was issued for this application on May 24, 2016.
7. A timely appeal was filed on June 8, 2016 by Ritch Brownlee. Under the provisions of

KCC 15.04.210(4) a single simultaneous appeal is mandated.

8. A Decision, Findings of Fact and Conclusions of law were issued on October 10, 2016. The decision was publicized and given a 10 working day appeal period (KCC 15A.07.010(1)).
9. A timely appeal was filed by Ritch Brownlee on October 25, 2016.
10. An open record public hearing was held by the Board of County Commissioners on January 17, 2017 and February 7, 2017 to consider the SEPA appeal and the Conditional use permit appeal concurrently as required by KCC 15.04.210(4).
11. A motion was made to dismiss the SEPA Appeal on the grounds that Mr. Brownlee failed to demonstrate that his endangered interest fell within the zone of interest protected by SEPA; and that Mr. Brownlee failed to demonstrate that he has standing; that he must allege a specific and perceptible injury or harm.
12. A motion was made to dismiss the conditional use permit appeal on the grounds that Mr. Brownlee, in filing his appeal, failed to comply with section 15A.07.010(2) of the Kittitas County Code; and that Mr. Brownlee failed to demonstrate that he has standing; that he must allege a specific and perceptible injury or harm.

NOW THEREFORE, BE IT HEREBY RESOLVED that the Kittitas County Board of Commissioners hereby **deny the motion to dismiss the SEPA appeal (2-1 vote), deny the SEPA appeal (3-0 vote), and grant the motion to dismiss the appeal of the conditional use permit (2-1 vote)**, and adopt the above Findings of Fact, and Conclusions of Law below.

1. Noise, transportation, utilities, public safety, storm water, and light and glare, were all included as elements of concern in Mr. Brownlee's SEPA appeal letter and all fall within the zone of interest protected by SEPA.
2. The appellant's potential lack of sleep, the potential diminished quiet enjoyment of his property, the potential negative traffic impacts, the proximity of Mr. Brownlee's home to the proposed use, and past experiences with the activity as proposed represent alleged demonstrable specific and perceptible injury or harm.
3. The appellant did not provide the required material and information in his conditional use appeal documentation. The appellant did not provide a statement identifying why he felt the decision to be wrong, nor did he provide a statement identifying desired outcome or changes to the decision.
4. Determinations made by the responsible SEPA official are accorded substantial weight.
5. The appellant failed to provide substantive information for the Board of County Commissioners on the record which left it with the definite and firm conviction that a mistake had been committed.

6. The decision to issue an MDNS was based on information sufficient to evaluate the proposal's environmental impact.

DATED this _____ day of _____, 2017 at Ellensburg, Washington.

BOARD OF COUNTY COMMISSIONERS
KITITAS COUNTY, WASHINGTON

Paul Jewell, Chairman

Laura Osiadacz, Vice Chairman

Obie O'Brien, Commissioner

ATTEST:
CLERK OF THE BOARD

Julie A Kjorsvik

APPROVED AS TO FORM:

Greg Zempel WSBA #19125