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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MILES JACKSON, et al.,

NO. 17-2-12165-7 KNT

Petitioners,

**FINAL ORDER DENYING
LUPA AND SEPA APPEAL**

v.

KING COUNTY, et al.,

Respondents.

On April 21, 2017, King County issued a decision ("Decision") approving a Commercial Site Development Permit ("Permit") requested by Maple Valley, Inc. ("MVI"). On that date, King County also issued a related Mitigated Determination of Non-Significance ("Determination"). Petitioners challenge the Decision under the Land Use Petition Act ("LUPA"), specifically RCW 36.70C.130(1)(b)-(d). Petitioners challenge the Determination under the State Environmental Policy Act ("SEPA"). The Court has carefully considered, the record in this case, extensive oral argument from counsel, and the parties' briefing, including supplemental briefs submitted in response to the November 8, 2017 Interim Order on LUPA and SEPA Appeal.

1 The wisdom, pros, and cons of (1) MVI's project and (2) the statutes involved
2 are not issues before this Court. Instead, the narrow issue before the Court is whether
3 Petitioners have carried the burden that RCW 36.70C.130(1) places on them. Because
4 they have not, the Court denies their petition.

5 **Road Standards**

6 MVI's application is "considered under the zoning and other land use control
7 ordinances in effect on the date a complete application is filed meeting all of the
8 requirements" of King County Code ("KCC") 20.20.¹ MVI's application was
9 completed by June 25, 2014. Thus, the King County Code provisions discussed below
10 are the provisions in effect as of June 25, 2014.

11 **1. Application of Road Standards.**

12 Under KCC 14.42, King County has issued King County Road Design and
13 Constructions Standards ("Road Standards" or "Standards").² Petitioners argue that the
14 Road Standards apply to MVI's project and the project does not and cannot meet the
15 Standards.
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17 For the proposition that the Standards apply here, Petitioners primarily rely on
18 KCC 14.42.010-.040. These statutes contain several provisions about applying the
19 Standards. The one that is controlling here—that applies to commercial
20 developments—is KCC 14.42.040.D: "For commercial developments, [the Road
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22 ¹ KCC 20.20.070.

23 ² King County Ordinance ("Ord.") 15753 (May 7, 2007) (sub #61, Appendix A).

1 Standards] shall apply unless otherwise determined by the development review
2 engineer or as specified by K.C.C. Title 21A. These standards shall apply to
3 commercial developments with public or dedicated rights-of-way or easements, unless
4 otherwise determined by the development review engineer.”³ Thus, the Standards
5 apply but only if and how the development review engineer determines that they
6 apply.

7
8 The “development review engineer” refers to the King County Department of
9 Development and Environmental Services employee responsible for right-of-way use
10 permits and road and drainage improvements constructed as part of development
11 permits.⁴ The Department of Development and Environmental Services is now the
12 Department of Permitting and Environmental Review (“DPER”).⁵ The Decision
13 approving MVI’s Permit was issued by the DPER Assistant Director.⁶ The Assistant
14 Director appears to qualify as, or speak for, the development review engineer and no
15 party has argued otherwise. In Conditions 15 and 16, the Decision addresses the ways
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18 ³ Ord. 15753 § 5.D (emphasis added); see Supplemental Brief of Petitioners (“Pet. Suppl. Br.,” sub
19 #57) at 7 n.13 (“If any conflict were deemed to exist between to statutory schemes, the more specific
20 statute will prevail over a general statute.”) (citing Hallauer v. Spectrum Prop., Inc., 143 Wn.2d 126,
21 146 (2001)); id. at 7 (“King County in adopting KCC 14.42.040 recognizes that commercial develop-
22 ment must be treated differently”); Supplemental Reply Brief of Petitioners (“Pet. Suppl. Reply,” sub
#63) at 3 (KCC 14.42.040.D “[s]pecifically address[es] commercial developments); see also Ord.
15753 § 4 (“The standards apply to modifications of roadway features or existing facilities . . . when
so required by King County . . .”) (emphasis added); Ord. 15753 § 5.A (“Offsite roadway improve-
ments shall be based on an assessment of the impacts of the proposed land development by the
reviewing agency.”)

⁴ Ord. 15753 § 3.B.

⁵ See Cook v. King County, 186 Wn. App. 1018, 2015 WL 1030294 at *1 (2015).

⁶ Decision at 12 (DPER file at SC00019).

1 in which the Road Standards will apply to MVI's development.⁷ Thus, for MVI's
2 commercial development, the Road Standards apply as "determined by the
3 development review engineer"—i.e., as stated in Conditions 15 and 16.⁸ This
4 determination satisfies KCC 14.42.

5 Petitioners also rely on KCC 21A.28.060.A: "All new development shall be
6 served by adequate roads. Roads are adequate if the development's traffic impacts on
7 surrounding public roads are acceptable under the level-of-service standards and the
8 compliance procedures established in K.C.C. Title 14."⁹ But Petitioners do not note
9 any level-of-service noncompliance and primarily argue that KCC 21A.28.060.A
10 "does not lessen" compliance with the Road Standards.¹⁰ This may be true but, as
11 explained above, KCC 14.42.040.D addresses when and how the Road Standards
12 apply to commercial developments.

14 **2. Road classification.**

15 Petitioners repeatedly argue that the Decision is in error because the road
16 classifications in the Road Standards are prescriptive and the Decision applies the
17 wrong classification to roads involved here.¹¹ Even if the classifications are
18 prescriptive—which is not at all clear—KCC 14.42.040.D still gives the development
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21 ⁷ Decision at 11 (SC00018) ¶¶ 15-16.

22 ⁸ See also Decision at 7-8 (SC00014-15) ¶¶ 10-12; DPER file at SC00304-306 (thorough analysis of
23 traffic and road issues).

⁹ KCC 21A.28.060.A.

¹⁰ Pet. Suppl. Br. at 7.

¹¹ See, e.g., *id.* at 2-4.

1 review engineer discretion as to how to apply the Standards, including the road
2 classifications.

3 **3. Variance.**

4 Petitioners argue that the development review engineer may have discretion,
5 but the engineer can exercise this discretion only under the “variance” process
6 addressed in KCC 14.42.060.¹² But this argument contradicts the plain language of the
7 statutes involved. Apart from the section 060 variance process, section 040.D plainly
8 states that the Road Standards “shall apply unless otherwise determined by the
9 development review engineer.”¹³ Under the statute, if the engineer determines how the
10 Standards will apply to a specific commercial development, the developer is not
11 required to seek a variance for the engineer’s determination. Petitioners have cited no
12 authority for the proposition that even though the statute gives the engineer discretion
13 in applying the Standards, MVI must still seek a variance for the engineer’s
14 determination.
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16 **4. Summary.**

17 Petitioners argue that KCC 14.42.040.D does not give the County “unbridled
18 discretion” in applying the Road Standards.¹⁴ Certainly, that is true, as far as it goes.
19 But section 040 does give the County some discretion. And Petitioners bear the burden
20 of showing that the discretion, as exercised in this case and as reflected in the
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22 ¹² See, e.g., Pet. Suppl. Br. at 8-9.

23 ¹³ Ord. 15753 § 5.D (emphasis added).

¹⁴ Pet. Suppl. Reply at 3:20.

1 Decision, is an erroneous interpretation of the law, after allowing for such deference as
2 is due the construction of a law by a local jurisdiction with expertise; is not supported
3 by evidence that is substantial when viewed in light of the whole record; or is a clearly
4 erroneous application of the law to the facts.¹⁵ Petitioners have not carried this burden.

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6 **Ruling**

7 For the reasons stated above and stated in the Interim Order on LUPA and
8 SEPA Appeal, it is ORDERED that:

9 1. Petitioners' Land Use Petition and State-Environmental Policy Act
10 (SEPA) Appeal¹⁶ is denied.

11 2. King County's decision approving MVI's Commercial Site
12 Development Permit and its related Mitigated Determination of Non-Significance are
13 affirmed.

14
15 November 28, 2017

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17 Judge Chad Allred

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23 ¹⁵ RCW 36.70C.130(1)(b)-(d).

¹⁶ Sub #1.