

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

FILED  
17 NOV -8 PM 4:13  
KING COUNTY  
SUPERIOR COURT CLERK  
KENT, WA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MILES JACKSON, et al.,  
  
Petitioners,  
  
v.  
  
KING COUNTY, et al.,  
  
Respondents.

NO. 17-2-12165-7 KNT  
  
**INTERIM ORDER ON  
LUPA AND SEPA APPEAL**

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. The Court has carefully considered the parties' briefing, the record in this case, and extensive oral argument from counsel.

1 **Land Use Petition Act**

2 **1. Vesting.**

3 King County Code (“KCC”) 20.20.070, entitled “Vesting,” states that  
4 applications for Type 1 land use decisions—the type involved here—“shall be  
5 considered under the zoning and other land use control ordinances in effect on the date  
6 a complete application is filed meeting all of the requirements of this chapter.”<sup>1</sup> MVI’s  
7 application was completed by June 25, 2014.

8 Petitioners argue that the Decision is not consistent with KCC 21A.08.080.  
9 B.27.a. That provision applies to “[m]arijuana producers in all RA zoned areas. . . .”<sup>2</sup>  
10 But MVI’s property was zoned Industrial as of June 25, 2014. And under KCC  
11 20.20.070, MVI is vested to the 2014 zoning. Thus, per KCC 20.20.070, the property  
12 is not in a “RA zoned area” and KCC 21A.08.080.B.27.a. does not apply.

13  
14 Petitioners also argue that the Decision—e.g., in Project Description 17 and  
15 Condition 22—goes too far in describing what is vested. But the Decision itself cites  
16 to code provisions that limit the scope of MVI’s vested rights.<sup>3</sup> The Court finds that  
17 the Decision allows vesting only to the extent allowed by the King County Code.<sup>4</sup>

18 As to the Decision’s statements about vesting, Petitioners have not carried their  
19 burden under RCW 36.70C.130(1).  
20

21 \_\_\_\_\_  
<sup>1</sup> KCC 20.20.070.

22 <sup>2</sup> KCC 21A.08.080.B.27.a.

23 <sup>3</sup> See, e.g., KCC 21A.41.070.B (additional review “will not be required for subsequent permits provided the approved plan is not altered”) (emphasis added); KCC 21A.41.110.B; KCC 21A.32.010-075.

<sup>4</sup> See note 3 above.

1 **2. Road standards.**

2 Petitioners argue that the Decision does not comply with applicable road  
3 standards. The Court finds that the parties have not sufficiently addressed this  
4 argument and, therefore, requires further briefing, as stated below.

5 **3. Other alleged errors.**

6 As to the other alleged errors in the Decision, Petitioners have not carried their  
7 burden under RCW 36.70C.130(1).

8 **State Environmental Policy Act**

9  
10 Petitioners have not shown that the Mitigated Determination of Non-  
11 Significance is clearly erroneous or arbitrary and capricious<sup>5</sup> and, thus, have not  
12 established a SEPA violation.

13 **Ruling**

14 For the reasons stated above, it is ORDERED that:

15 1. Except for the road deficiencies that Petitioners allege, the Petition<sup>6</sup> is  
16 denied and King County's decision approving MVI's Commercial Site Development  
17 Permit and related Mitigated Determination of Non-Significance are affirmed.

18 2. The parties shall provide additional briefing on the alleged road  
19 deficiencies. Without limitation, the briefing shall, with specificity, address (a)  
20 whether and how the following Code provisions apply to this case and apply in  
21

22  
23 <sup>5</sup> See Moss v. City of Bellingham, 109 Wn. App. 6, 19 (2001), review denied, 146 Wn.2d 1017 (2002).  
<sup>6</sup> Sub #1.

1 relation to each other: KCC 14.42.040.A, 14.42.040.D, 14.42.060, and 21A.28.060;  
2 and (b) the meaning and materiality of the variance referenced in the Decision at page  
3 6, paragraph 4. Petitioners shall serve their brief by November 14, 2017. King County  
4 and MVI shall each serve a response brief by November 17, 2017. Petitioners shall  
5 serve any reply brief by November 21, 2017. Each brief shall be limited to no more  
6 than 10 pages.  
7

8 November 8, 2017

9   
10 \_\_\_\_\_  
11 Judge Chad Allred  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23