WHATCOM COUNTY PROSECUTING ATTORNEY

Eric Richey

Whatcom County Courthouse
311 Grand Avenue Suite 201
Bellingham, WA 98225-4079
(360) 778-5710 /Main Office FAX (360) 778-5711

October 5, 2021

To: Planning Commission
From: Royce Buckingham, Attorney for Whatcom County

re: Marijuana moratorium case.

Commissioners,

The recent Supreme Court case of *Seven Hills v. Chelan County* reaffirms the principle that vested rights allow a marijuana facility that has applied for permits to continue operating if a subsequent moratorium or change in the law bars new marijuana facilities. Previously established (by application) facilities become valid nonconforming uses.

Though the timeline and permitting history in the case are complex and confusing, the following excerpted italicized quotes from the case summarize the holding well.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 98730-1

Filed: September 23, 2021

SEVEN HILLS, LLC, a Washington limited liability company; and WATER WORKS PROPERTIES, LLC, a Washington limited liability company,

Petitioners,

v.

CHELAN COUNTY, a municipal corporation,

Respondent.

In 2014, Seven Hills LLC began developing a cannabis production and processing business in Chelan County, Washington.

After Seven Hills procured the relevant permits and began building on its property, Chelan County (County) passed Resolution 2015-94, which placed a moratorium on siting new cannabis related businesses.

While the moratorium was in place, Seven Hills received the necessary state licenses and began operating its cannabis production and processing

Shortly thereafter, the County passed Resolution 2016-14, which changed the relevant ordinances resulting in the barring of new cannabis-related businesses.

…

We hold that the County's resolution declaring a moratorium on siting new cannabis production and processing activities did not amend or replace existing zoning ordinances, and that Seven Hills established a nonconforming use prior to adoption of Resolution 2016-14.

We hold that Resolution 2016-14 did amend the County's ordinances defining agricultural use, but did not retroactively extinguish vested rights.

The bottom line is contained in the following quote from the case: "…a county may not change the rules applicable to an already submitted application. Matson, 79 Wn. App. at 648-49." This is a basic land use principle, and it was simply reaffirmed by the *Seven Hills v. Chelan* case.

Sincerely,

/s/ Royce Buckingham

Royce Buckingham

Attorney for Whatcom County

rbucking@co.whatcom.wa.us