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IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION III

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POORMAN ENTERPRISES, LLC

v.

RST PARTNERSHIP, et al.

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**BRIEF OF RESPONDENT CHELAN COUNTY**

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**I. INTRODUCTION AND SUMMARY OF ARGUMENT**

Chelan County (the “County”) has broad authority to adopt zoning and land use regulations. The County adopted legislative enactments which, among other things, permanently prohibited the establishment, siting, location, permitting, licensing, or operation of recreational marijuana production and processing businesses in unincorporated Chelan County.

Poorman Enterprises, LLC, (“Poorman”) operated a business for the production and/or processing of marijuana on land in unincorporated Chelan County owned by RST Partnership (“RST”). Poorman’s marijuana operations constituted a violation of the County’s regulations. On September 21, 2018, the County sent written notice to RST and Poorman stating that Poorman’s marijuana operations were unlawful.

RST then took efforts to terminate leases that existed between it and Poorman. Poorman responded by filing suit against RST in Chelan County Superior Court alleging claims for breach of contract. RST answered and alleged various counterclaims against Poorman. Poorman impleaded the County and several of its current and former officials. Poorman asserted contribution claims against the County for any liability that might be imposed against Poorman based upon RST’s counterclaims. The County answered and asserted claims against

Poorman, RST, and others based upon the illegal marijuana business on the property.

On September 26, 2018, RST moved for summary judgment on Poorman's breach of contract claims. Poorman filed its responsive materials on February 19, 2019. The County filed a memorandum and supporting declaration on March 11, 2019, in order to respond to assertions raised in Poorman's opposition materials. RST's motion was heard on March 25, 2019. The trial court entered an order granting RST's motion on June 10, 2019.

**II. COUNTERSTATEMENT OF THE ISSUES ON APPEAL**

- A. Did Poorman fail to assign error to the trial court's consideration of evidence and argument submitted by the County regarding RST's motion for summary judgment?**
- B. Did the County have standing to offer evidence and argument relating to RST's motion for summary judgment?**
- C. Did the trial court err in concluding that Poorman's marijuana business was not lawfully established prior to September 29, 2015?**

**III. COUNTERSTATEMENT OF THE CASE**

**A. Passage of I-502.**

On November 6, 2012, the voters of the State of Washington approved Initiative 502 ("I-502") which systematically changed the State's marijuana laws. *See* Washington Laws 2013, c. 3. Included among the various components of I-502 was a structure for the legalized

limited production, processing, and sale of recreational marijuana to persons 21 years and older, along with the creation of a regulatory state licensing system through the Washington State Liquor and Cannabis Board (“LCB”). *Id.* at § 4.

**B. The County’s response to the passage of I-502.**

**1. Adoption of first temporary moratorium.**

On September 16, 2013, the County adopted Resolution No. 2013-73, which declared a six-month moratorium on the County’s acceptance of any applications for “permits or licenses to grow, process, dispense and/or sell marijuana/cannabis.” CP 272, 276-278. The purpose of the moratorium was to give County staff time to “draft licensing, zoning, comprehensive plans, and mapping” regulations relating to marijuana businesses. CP 277. On January 14, 2014, through the adoption of Resolution No. 2014-5, the County terminated the moratorium without adopting any such regulations. CP 272, 284-286

**2. Adoption of second temporary moratorium.**

On September 29, 2015, the County adopted Resolution 2015-94, which established a new six-month moratorium on the County’s acceptance of any applications for “permits or licenses to grow, process, dispense and/or sell marijuana/cannabis.” CP 272, 287-289. On November 16, 2016, the County adopted Resolution No. 2015-102,

which continued the moratorium. CP 272, 290-293. The County adopted Resolution No. 2016-14 on February 16, 2016, which, among other things, “permanently prohibit[ed] the establishment, siting, location, permitting, licensing, or operation of any and all recreational marijuana or cannabis production and processing,” regardless of whether said activities were authorized by state law, and declared said activities to be “public nuisances and nuisances per se.” CP 272, 295-300.

Resolution No. 2016-14 also provided that uses and associated structures prohibited by the resolution that “were lawfully established and in actual physical operation prior to September 29, 2015, [were] nonconforming uses and must cease, abate, and terminate no later than March 1, 2018.” CP 299.

**C. Poorman’s marijuana operations.**

Poorman operated a cannabis production and/or processing business in unincorporated Chelan County. CP 149, 240; Br. 2.

Poorman received a license for these activities from the LCB. CP 150, 151, 241; Br. 2. The business address for Poorman’s LCB license was for property in Monitor, Washington, (the “property”) owned by RST. CP 3, 4, 9, 53, 54, 150, 151, 241; Br. 2. Beginning in 2014, RST began leasing the property, or portions thereof, to Poorman pursuant to several different lease agreements. CP 4, 9, 54, 64, 65, 67-123.; Br. 2, 3; Resp.

Br. 3-7.

**D. The County's enforcement efforts relating to Poorman's use of the property.**

On September 21, 2016, the County sent an initial notice to RST stating that the operation of marijuana businesses on the property constituted a violation of Resolution 2016-14, as well as the Chelan County Code ("CCC"), state law, and the International Building Code. CP 65, 124-130. The notice informed RST that necessary permits had not been obtained and that, as a result, Poorman's use of the property had not been lawfully established prior to September 29, 2015, for purposes of Resolution 2016-14's two-year amortization period. CP 124-129. The notice cautioned RST that failure to abate the illegal conditions would result in the issuance of an order to compel the correction of each specified violation. CP 129, 130. A copy of this notice was sent to Poorman and another marijuana business operating on the property, Evergreen Production ("Evergreen"). CP 130.

Because the illegal conditions on the property were not abated, on February 10, 2017, the County issued a document titled Notice and Order to Abate Zoning and Building Code Violations (the "Notice and Order") to RST. CP 272, 366-375. A copy of the Notice and Order was sent to, and received by, Poorman and Evergreen. CP 364, 365, 375. The Notice and Order again outlined the various illegal conditions

existing on the property and ordered the abatement of the conditions within the time periods stated therein. CP 366-372. The Notice and Order reiterated the reasons why Poorman's and Evergreen's marijuana operations were not lawfully established as of September 29, 2015, and were therefore not entitled to the benefit of the two-year amortization period for nonconforming uses included in Resolution 2016-14. CP 366, 367. The Notice and Order specified the potential penalties for failing to abate and correct the illegal conditions on the property, and also contained a statement outlining RST's right to appeal. CP 373-375.

**E. RST's and Evergreen's appeal of the Notice and Order.**

RST and Evergreen chose to appeal the Notice and Order, but Poorman did not. CP 251, 315-326, 330. A hearing on the administrative appeal was held on May 17, 2017, before the Chelan County Hearing Examiner. CP 334. The hearing examiner heard evidence and made decisions on issues pertaining to the marijuana operations occurring on the property, including Poorman's marijuana operations. CP 327-336.

On June 5, 2017, the hearing examiner entered findings of fact, conclusions of law, and a decision affirming all violations in the Notice and Order, except violation # 4 relating to two unpermitted 8-foot tall fences which, subsequent to the Notice and Order, had been voluntarily

removed. CP 327-336. The hearing examiner’s findings of fact included several findings (i.e., findings of fact nos. 17.6, 17.8, 17.12, 17.14, 17.18, 24, 25, 26, 27, 28, 30.1, 30.3, 31.1, 31.2, 31.3) about inappropriate, unlawful, and unpermitted activities relating to Poorman’s operation of a marijuana business on the property. CP 329-333. The hearing examiner specifically found, at finding of fact no. 29.2, that “all applicable permits were not secured prior to September 29, 2015, by either business, Evergreen or Poorman, in conjunction with maintaining a marijuana business on the property.” CP 331. Accordingly, the hearing examiner found that “Poorman’s use of the property for marijuana production and/or processing of marijuana, therefore, was not lawfully established and/or in actual physical operation prior to September 29, 2015.” CP 331.

RST and Evergreen separately sought review of the hearing examiner’s decision pursuant to Chapter 36.70C RCW (the Land Use Petition Act or “LUPA”). CP 253. Both LUPA petitions were dismissed on procedural grounds. CP 253. RST and Evergreen appealed those dismissals. CP 253. This Court reversed the trial court. *RST P’ship. v. Chelan County*, 9 Wn. App.2d 169 (2019).

**F. Litigation commenced by Poorman since the issuance of the County’s initial notice.**

**1. Chelan County Superior Court Case No. 17-2-00191-5.**

Beginning on September 27, 2016, RST sent Poorman notices of cancellation and default relating to the leases between the parties for rooftop and outdoor space on the property. CP 134-138. In response, Poorman commenced a breach of contract case against RST on March 13, 2017, in Chelan County Superior Court Case No. 17-2-00191-5 (the “191 case”). CP 1-7. RST answered and asserted counterclaims against Poorman, which RST subsequently amended. CP 8-21, 25-37.

In answering RST’s amended counterclaim, Poorman asserted a third-party contribution claim against the County and current and former County officials claiming that they were liable to Poorman “in whole or part for RST’s counterclaims against Poorman.” CP 61. The County answered these third-party claims by Poorman. CP 144-149. The County also asserted claims against Poorman, RST, and Evergreen, and sought a declaration of a public nuisance and the issuance of a warrant of abatement based upon the operation of marijuana businesses on the property. CP 149-156.

On March 13, 2019, Poorman’s third-party claims against the County and its current and former officers were dismissed without prejudice. CP 473-478. The County’s claims against Poorman were unaffected by the order of dismissal and remained part of the 191 case. CP 149-156, 473-478.

## **2. Chelan County Superior Court Case No. 17-2-00348-9.**

On April 24, 2017, Poorman commenced a new lawsuit under Chelan County Superior Court Case No. 17-2-00348-9 (the “348 case”) against Chelan County and current and former County officials. Supp. CP, Ex. A pp. 13-20.<sup>1</sup>

The County answered Poorman’s complaint and asserted counterclaims against Poorman and other named counterdefendants, including RST and Evergreen. The County sought a declaration of public nuisance and the issuance of a warrant of abatement based upon the operation of marijuana businesses on the property. Supp. CP, Ex. B pp. 1-13.

## **3. RST’s motion for summary judgment in the 191 case.**

RST filed a motion for summary judgment on all claims asserted against it by Poorman in the 191 case on September 26, 2018. CP 38-56, 63-143. Poorman filed its response brief to RST’s motion for summary

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<sup>1</sup> On January 28, 2020, the Court Commissioner granted RST’s motion to supplement the appellate record. The Court Clerk’s letter that accompanied the Commissioner’s decision stated that the exhibits attached to RST’s motion to supplement had been copied and are now part of the record on review as supplemental clerk’s papers. Those supplemental materials were never assigned clerk’s paper numbers. The County will cite to those approved supplemental materials as “Supp. CP” and refer to the exhibit and page number assigned by RST in its motion to supplement the record.

judgment on February 19, 2019. CP 197-233. In opposing RST's motion for summary judgment, Poorman argued, in part, that it was "covered by the Grandfather clause of Resolution 2016-14 (§7) because Poorman was lawfully sited and in actual operation" at the property "prior to September 29, 2015." CP 200. Poorman's brief contained other similar assertions that its marijuana business on the property was lawfully established and in actual physical operation prior to September 29, 2015. CP 201, 203, 204.

To dispute these assertions by Poorman, the County filed a response brief on March 11, 2019. CP 248-459. The County made clear that its "**brief and supporting declarations are meant only to address Poorman's assertion of being lawfully established prior to September 29, 2015, and does not purport to address any other issues on summary judgment.**" CP 249 (emphasis in the original). The County's memorandum explained the development of the County's marijuana regulations, the code enforcement history relating to Poorman's and Evergreen's operation of marijuana businesses on the property, and the related administrative and judicial appeals by RST and Evergreen. CP 249-253. The County's brief demonstrated that Poorman was estopped from claiming its marijuana operations were legally established prior to September 29, 2015. CP 254-257. The County

argued that undisputed facts showed that Poorman's marijuana operations were not legally established by the requisite date due to lack of necessary permits. CP 254-264. Poorman did not introduce any evidence on summary judgment contradicting this showing by the County. CP 197-233.

The only document relating to RST's motion for summary judgment filed after the County's brief and supportive declaration was the reply memorandum of RST. CP 460-472, 493. That memorandum contained no objection to the summary judgment evidence or argument submitted by the County. CP 460-472.

RST's motion for summary judgment was heard on March 25, 2019. CP 486-491; RP 63-100. The County appeared and opposed Poorman's contention that its marijuana operations were lawfully established on the property prior to September 29, 2015. RP 85-87, 98. Poorman did not object to the County's standing to participate in the hearing due to the earlier dismissal of Poorman's third-party claims against the County. RP 63-100. Poorman did not object to the evidence and arguments presented in the written materials submitted by the County due to the County's alleged lack of standing. RP 63-100.

Instead, Poorman engaged with the arguments and evidence presented by the County by stating that "if what the County says is true

that there was never any lawful marijuana growing activity” it would “tend to expose some liability on the part of RST for compliance.” RP 87, 88. Poorman went on to discuss how the County’s assertions might affect Poorman’s pleadings and the claims it was asserting against RST. RP 88. Poorman also noted that the only issues relevant to RST’s motion were whether RST “issu[ed] the notice of default” relating to the pertinent leases, and whether Poorman could cure any default relating to those leases. RP 94, 96.

On May 8, 2019, the trial court issued a letter decision granting RST’s motion for summary judgment. CP 486-491. As part of its decision, the trial court found that “Poorman’s operations were not lawfully established” prior to September 29, 2015 “because Poorman had not obtained the necessary permits to be *lawfully established* prior to” that date. CP 490 (emphasis in the original). The trial court entered an order granting RST’s motion for summary judgment on June 10, 2019, in which it found that “the undisputed factual record establishes that Poorman had not lawfully established its cannabis operations prior to September 29, 2015.” CP 495.

#### **IV. ARGUMENT**

##### **A. Standard of review.**

Review of an order granting summary judgment is de novo. *Emerald Enterprises, LLC v. Clark County*, 2 Wn. App.2d 794, 802-03 (2018), *review denied*, 190 Wn.2d 1030 (2018). Evidentiary decisions and the procedures employed by a trial court relating to a motion for summary judgment are reviewed for manifest abuse of discretion. *Allen v. Asbestos Corp.*, 138 Wn. App. 564, 570 (2007); *Lake Chelan Shores Homeowners Ass’n v. St. Paul Fire & Marine Ins. Co.*, 176 Wn. App. 168, 183 (2013).

**B. The Court should not consider Poorman’s contention that the trial court erred in allowing the County to participate in RST’s motion for summary judgment because Poorman failed to raise any similar objection to the trial court.**

RAP 2.5(a) provides that an “appellate court may refuse to review any claim of error which was not raised in the trial court.” The general rule is that a party “waives the right to appeal an error unless there is an objection in the trial court.” *In re Matter of Adoption of K.M.T.*, 195 Wn. App. 548, 567 (2016). Consistent with this general rule, “contentions not made to the trial court in its consideration of a summary judgment motion need not be considered on appeal.” *Concerned Coupeville Citizens v. Town of Coupeville*, 62 Wn. App. 408, 413 (1991).

Poorman argues that once its “contribution claims were dismissed, the County lost standing in the 191 case, even though it did

not dismiss the fourth-party claims.” Br. 18. In light of this alleged lack of standing, Poorman contends that the trial court “should not have considered” the written materials submitted by the County relating to RST’s motion for summary judgment. Br. 17, 18. Poorman failed to make any similar contention or objection regarding the County’s purported lack of standing to the trial court during the summary judgment hearing. RP 63-101. The record on appeal is devoid of any such objection. CP 1-506; Supp. CP, Exs. A-D; RP 1-101.

This situation is similar to the scenario before the court in *Lampson Universal Rigging , Inc. v. Washington Pub. Power Supply Sys.*, 44 Wn. App. 237, 242-43 (1986), where the defendant failed to raise an objection to a multiple-day evidentiary hearing to create a factual record relating to the parties’ competing motions for summary judgment. Instead, the defendant objected for the first time on appeal. *Id.* at 240-41. The court of appeals concluded that “the challenge to the procedure employed” by the trial court had “not been preserved for appeal” because neither party objected to that procedure during the hearing before the trial court. *Id.* at 243.

This Court should reject Poorman’s assertion, raised for the first time on appeal, that the trial court erred in considering the County’s response to RST’s motion for summary judgment. *Id.*; *K.M.T.*, 195 Wn.

App. at 567; *Concerned Coupeville Citizens*, 62 Wn. App. at 413; RAP 2.5(a).

**C. The Court should reject any argument of Poorman that the County was barred from asserting that Poorman’s marijuana operations were not lawfully established prior to September 29, 2015.**

Poorman contends that “the County would have received notification of Poorman’s application for a marijuana producer/processor license,” and that “the County could have also responded and objected if they believed Poorman did not have the right to operate at the” property.

Br. 19. Rather than doing so, Poorman contends “the County did nothing about this supposedly illegal marijuana grow until” it sent the initial notice letter to RST. Br. 19.

The intent of these assertions is unclear. However, to the extent Poorman is claiming that the County was barred by some unidentified legal doctrine from asserting that Poorman’s marijuana operations on the property had not been lawfully established prior to September 29, 2015, the Court should decline to consider that contention because Poorman failed to raise it before the trial court. CP 1-506; Supp. CP, Exs. A-D; RP 1-101; *K.M.T.*, 195 Wn. App. at 567; *Concerned Coupeville Citizens*, 62 Wn. App. at 413; RAP 2.5(a).

**D. Poorman has not identified any legal basis supporting its contention that the County lost standing.**

Poorman asserts that the rationale behind the priority of action doctrine, as discussed in *State v. Stevens County District Court Judge*, 7 Wn. App.2d 927, 933-34 (2019) *aff'd* 453 P.3d 984 (Wash. 2019), supports the conclusion that the County lost standing to participate in the 191 case once Poorman's counterclaims against the County were dismissed. Br. 18. This is incorrect.

As a preliminary matter, Poorman states that the stipulation between it and RST regarding the dismissal of Poorman's contribution claim against the County was entered on February 22, 2019. Br. 18. However, the record on appeal demonstrates that the stipulation was signed on March 11, 2019, which was also the date the County filed its written materials regarding RST's motion for summary judgment. CP 248-459, 473-475. The order of dismissal was entered by the trial court on March 13, 2019. CP 473-478. When the County's summary judgment materials were filed, Poorman's contribution claims against the County were still pending.

The priority of action doctrine is intended to prevent "a court from interfering with the authority of another court of competent jurisdiction." *Bunch v. Nationwide Mut. Ins. Co.*, 180 Wn. App. 37, 44 (2014). Poorman acknowledges that no jurisdictional issues exist between the 191 case and the 348 case, which were both pending before

the Chelan County Superior Court. Br. 18; CP 1; Supp. CP, Ex. A p. 1.

Under the priority of action doctrine “ ‘the court which first gains jurisdiction of a cause retains the exclusive authority to deal with the action until the controversy is resolved.’ ” *Stevens County District Court Judge*, 453 P.3d at 987 (quoting *Sherwin v. Averson*, 96 Wn.2d 77, 80 (1981)). Poorman commenced the 191 case almost a month and a half before it commenced the 348 case. CP 1-7; Supp. CP, Ex. A pp. 1-20. To the extent any tension exists between proceedings and events in the 191 case and the 348 case occurring simultaneously, a proposition the County contends is incorrect, under the priority of action doctrine, the trial court in the 191 case would be the one to retain exclusive jurisdiction based upon the earlier commencement date. *Sherwin*, 96 Wn.2d at 80. The priority of action doctrine does not support Poorman’s assertion that the County lacked standing to participate in the summary judgment proceedings in the 191 case.

**E. Poorman’s lack of standing argument is an attempt to avoid the consequence of its decision to bring multiple claims against the County in different cases.**

In reality, the lack of standing argument is an attempt by Poorman to avoid the preclusive effect of the trial court’s conclusion in the 191 case (i.e., that Poorman’s marijuana business was not lawfully established on the property prior to September 29, 2015), in regards to

the claims and defenses raised in the 348 case. Br. 17, 18. According to Poorman, because “the County brought the same claim in two separate actions; whichever claim is brought first is the claim that should survive, unless the matters are consolidated.” Br. 18. Poorman cites no legal authority for this assertion. Br. 1-25.

Poorman’s argument ignores the reality that it was Poorman that improvidently elected to make the County a party in both the 191 case and the 348 case. CP 57-62; Supp. CP, Ex. A pp. 1-20. Poorman was not required to bring the County into the 191 case as a third-party defendant, but it made the voluntary decision to do so. *Puget Sound Bank v. Richardson*, 54 Wn. App. 295, 297-98 (1989) (noting that joinder of a third-party defendant is not mandatory); CR 14(b).

After being impleaded into this case, the County had the right to defend against Poorman’s claims and bring whatever claims it had against Poorman and the other parties to the 191 case relating to marijuana operations on the property. CR 14(a); CR 13(a). This includes claims that may be similar, or identical, to the counterclaims alleged by the County against Poorman in the 348 case. CR 13(a)(1). By asserting claims against Poorman and the other fourth-party defendants in the 191 case, the County properly invoked the jurisdiction of the trial court for purposes of those claims. *Chengdu Gaishi*

*Electronics, Ltd. v. G.A.E.M.S., Inc.*, 454 P.3d 891, 894 (Wa. App. 2019).

Poorman's argument is contrary to the provisions and principles set forth in CR 13(a)(1) and CR 14(a). By asserting claims against Poorman and the other fourth-party defendants in the 191 case, the County became a party to that case in its own right, irrespective of the existence or continuation of Poorman's third-party claims against the County. *Chengdu Gaishi Electronics, Ltd.*, 454 P.3d at 894. The County's right to participate in the 191 case was not impacted by the dismissal of Poorman's third-party claims. CP 473-478. Poorman has failed to demonstrate that the trial court abused its discretion by allowing the County to submit evidence and argument relating to RST's motion for summary judgment. The preclusive effect of the trial court's rulings will be addressed, if necessary, in later proceedings.

**F. The trial court did not err in concluding that the undisputed evidence on summary judgment demonstrated that Poorman's marijuana business was not lawfully established prior to September 29, 2015.**

During the proceedings on RST's motion for summary judgment, the County produced evidence demonstrating that Poorman had not lawfully established its marijuana business on the property prior to September 29, 2015. CP 265-459. The record on appeal is devoid of any contradictory evidence offered by Poorman. CP 1-506; Supp. CP,

Exs. A-D; RP 1-101.

Poorman argued below that its marijuana business was licensed by the LCB. RP 83-85. However, WAC 315-55-020(15) specifically states that “[t]he issuance or approval of a license” by the LCB “shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to... zoning ordinances.” This rule recognizes that local governments retain authority to adopt zoning regulations prohibiting marijuana businesses in spite of the fact that those businesses may be licensed by the state. *Emerald Enterprises*, 2 Wn. App.2d at 817-18.

“A component of establishing a preexisting use is that the use be lawfully established.” *King County, Dep’t. of Dev. & Env’tl. Servs. v. King County*, 177 Wn.2d 636, 647 (2013). A landowner’s or occupant’s use of property cannot be lawfully established if he or she failed to obtain the necessary permits for that use. *Id.* at 647-48; *First Pioneer Trading Co. v. Pierce County*, 146 Wn. App. 606, 614-15 (2008).

The County presented evidence that, prior to September 29, 2015, Poorman failed to obtain several permits required for Poorman’s business to have been lawfully established on the property. CP 65, 124-130, 265-459. Poorman failed to submit any evidence to the contrary. There was no error in finding that Poorman’s marijuana business was not

lawfully established prior to September 29, 2015.

**G. The timing of the County’s enforcement efforts relating to the marijuana operations on the property is immaterial to this case.**

Poorman’s brief appears to claim that the timing of the County’s enforcement efforts barred the County’s argument on Poorman’s status.

Br. 19. Poorman’s argument that the County was somehow prevented from determining whether Poorman’s marijuana business was a legal nonconforming use must be rejected as contrary to Washington law.

The doctrines of equitable estoppel and laches “will not be applied where its application would interfere with the discharge of governmental duties.” *City of Mercer Island v. Steinman*, 9 Wn. App 479, 482 (1973). The enactment and enforcement of zoning and land use regulations are governmental functions. *Id.* As such, “a municipality is not precluded from enforcing zoning regulations if its officers ... have remained inactive in the face of such violations.” *Id.* at 483. The timing of the County’s enforcement efforts relating to the marijuana operations on the property, including Poorman’s, has no bearing on the County’s ability to raise Poorman’s failure to lawfully establish its marijuana business prior to September 29, 2015, in the 191 case or otherwise. *See* Br. 19.

**V. CONCLUSION**

The trial court's ruling that Poorman's marijuana business was not lawfully established prior to September 29, 2015, should be affirmed.

RESPECTFULLY SUBMITTED THIS 27<sup>th</sup> day of February, 2020.

MENKE JACKSON BEYER, LLP



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*Attorneys for respondents Chelan County, Keith Goehner, Doug England, Ron Walter, Kevin Overbay, and Doug Lewin*

DECLARATION OF SERVICE

On the day set forth below, I emailed via the court's filing system and deposited in the U.S. Mail a true and accurate copy of: Brief of Respondent Chelan County, et al. in Court of Appeals, Division III, Cause No. 369072 to the following parties:

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED THIS 27th day of February, 2020, at Yakima,  
Washington.

  
Cindy Maley

**MENKE JACKSON BEYER, LLP**

**February 27, 2020 - 1:35 PM**

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