

Hon. Vicki Hogan

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

MMH, LLC, a Washington limited liability
company,

Plaintiff,

vs.

CITY OF FIFE, a Washington municipal
corporation,

Defendant.

No. 14-2-10487-7

DECLARATION OF DAVID OSAKI IN
SUPPORT OF SUMMARY JUDGMENT

The undersigned makes the following Declaration under penalty of perjury as permitted by RCW
9A.72.085:

I, David Osaki, state and declare as follows:

1. I am over the age of eighteen (18) and not a party to the above referenced action. The matters hereinafter set forth are within my own direct knowledge and I am competent to provide evidence and testimony in these proceedings.
2. I am the Director of Community Development for the City of Fife.
3. On August 13, 2013, the Fife City Council passed Ordinance No. 1841, a one (1) year moratorium on the creation, establishment, location, operation, licensing, maintenance or continuation of any facility, business or use for producing, processing, or retailing of marijuana or marijuana infused products and any collective garden for the purpose of producing, processing, transporting, and/or delivering marijuana for medical use.

- 1 4. While the moratorium was in effect, the producing, processing, and retailing of marijuana
2 and marijuana infused products were prohibited uses in all zoning districts in the City of
3 Fife.
- 4 5. While the moratorium was in effect, no business license application could be accepted nor
5 any business license issued to any person for producing, processing, or retailing of
6 marijuana or marijuana infused products, or for a medical marijuana collective garden.
- 7 6. The moratorium directed the City staff to study the issues concerning the establishment and
8 operation of medical marijuana collective gardens presumably allowed under E2SSB and
9 the producing, processing, and retailing businesses allowed under Initiative-502, and to
10 prepare appropriate regulations in accordance with a work plan that was attached to the
11 ordinance. (See attached as Exhibit A)
- 12 7. Part of that work plan instructed the Planning Commission to review the issues and develop
13 an ordinance to be recommended to the City Council.
- 14 8. The City staff complied with all requirements of the adopted work plan.
- 15 9. In response to Ordinance No. 1841, the Fife Planning Commission met several times
16 between January 2014 and May 2014 to discuss the issues surrounding medical marijuana
17 collective gardens and recreational marijuana production, processing, and retail businesses.
- 18 10. During this time, the Fife Planning Commission accepted public testimony and received
19 multiple briefings from the City staff, including myself.
- 20 11. Beginning in at least January 2014, I sent emails to an "interested parties" email contact
21 list, alerting recipients to upcoming Fife Planning Commission meetings and Fife City
22 Council meetings where the topic of marijuana was on the agenda. These emails were sent
23 to anyone who requested to be on my email list, anyone who had called or emailed me
24 directly with questions or comments regarding marijuana (and who consented to be on the
email list), and others I thought might have an interest in the subject. (The "interested
parties emails sent between April 30, 2014 and May 30, 2014 are attached as Exhibit B.)

1 12. A person representing himself to be the business partner of the plaintiff's managing
2 member, i.e., Edward "Tedd" Wetherbee is on this mass email list.

3 13. Contained in most of my mass emails, including, specifically, my mass email of May 20,
4 2014, (see attached as Exhibit B), was the following language:

5 "As has been previously mentioned to many of you, the Fife Planning
6 Commission is an advisory body to the Fife City Council. When it gets to the
7 point of taking action, the Fife City Council may accept, modify and/or reject the
8 recommendation of the Fife Planning Commission, and/or may remand the issue
back to the Fife Planning Commission for further study.

9 In the meantime, the moratorium which the City of Fife currently has on the
10 acceptance of any permits or licenses for marijuana related land uses remains in
effect."

11 14. Edward "Tedd" Wetherbee, exchanged multiple emails directly with me on April 20, 2014,
12 and April 23, 2014 where I communicated the exact same warnings that my May 20, 2014
13 mass email contained in similar, if not the same, language. (See attached as Exhibit C)

14 15. In those emails to Mr. Wetherbee, I repeatedly informed him that any action he took
15 regarding buying or leasing property in Fife with the intent of operating a marijuana retail
16 business was at his own risk. (See attached as Exhibit C). Additionally, I cautioned him
17 that there was no guarantee that the Planning Commission would make a final
18 recommendation allowing marijuana retail, and, even if they did, there was no guarantee
19 that the City Council would accept and approve such a recommendation. (See attached as
20 Exhibit C).

21 16. The Planning Commission drafted a recommendation to the City Council on May 5, 2014
22 which recommended allowing marijuana retail businesses in a highly limited fashion in the
23 Regional Commercial (RC) zoning district, allowing marijuana processing and marijuana
24 production businesses in a limited fashion in the Industrial (I) zoning district, and banning
medical marijuana collective gardens in all zoning districts. (See attached as Exhibit D)

- 1 17. At its May 20, 2014 study session, the Fife City Council received a marijuana zoning
2 briefing from City staff, including the Planning Commission recommendation.
- 3 18. The Planning Commission's draft of a proposed ordinance including the Planning
4 Commission's recommendations was formally presented to the City Council on June 10,
5 2014. (See attached as Exhibit D).
- 6 19. The City Council held a public hearing, at a regularly scheduled city council meeting on
7 June 10, 2014, to accept public comment on proposed Ordinance No. 1872 which, when
8 initially presented to the City Council, reflected the Planning Commission's
9 recommendation.
- 10 20. There was a first reading of proposed Ordinance No. 1872 at a regularly scheduled City
11 Council meeting on June 24, 2014.
- 12 21. At the June 24, 2014 City Council meeting, Councilmember Johnson moved to amend
13 proposed Ordinance No. 1872 to ban all marijuana production, processing, and retail
14 businesses. This amendment passed.
- 15 22. On July 8, 2014, at a regularly scheduled City Council meeting, the Council voted 5-2 to
16 pass Ordinance No. 1872, as amended. (See attached as Exhibit E)

17 Dated at Tacoma, Washington, this ^{31st} day of July, 2014

18 VSI LAW GROUP, PLLC

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20 David Osaki

21 Community Development Director for the City of Fife

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9 MMH, LLC, a Washington Limited liability
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13 CITY OF FIFE, a Washington municipal
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15 Defendant.

Cause No. 14-2-10487-7

DECLARATION RE: SIGNATURE on
ELECTRONIC DOCUMENT

16 I, Alison Rigby, declare under penalty of perjury under the laws of the state of Washington,
17 that the foregoing electronic documents attached to this declaration, which consist of five (5) pages
18 including this declaration page, is a complete and legible image that I have examined personally and
19 that was received by me via:

20 E-mail at the following address arr@vsilawgroup.com

21 DATED at Tacoma, Washington, this 31st day of July, 2014.

22
23 
24 Alison Rigby, Paralegal

DECLARATION RE: SIGNATURE ON
ELECTRONIC DOCUMENT- 1

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