



Kitsap County Department of Community Development

Notice of Hearing Examiner Decision on Reconsideration

05/09/2017

To: Interested Parties and Parties of Record

RE: Project Name: OLALLA VALLEY WINERY & VINEYARD
 Applicant: CHISHOLM STUART & HOUSTON MARY ELLEN
 PO BOX 990
 OLALLA, WA 98359-0990
 Application: CONDITIONAL USE PERMIT (CUP)
 Permit Number: 16 01455

Enclosed is the Decision issued by the Kitsap County Hearing Examiner for the aforementioned project.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

http://www.kitsapgov.com/dcd/lu_env/he/HE%20Rules%20for%20Kitsap%20County%20-%2006-23-09.pdf

The Decision of the Hearing Examiner is final, unless appealed, as provided under Washington law.

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact Help@Kitsap1.com or (360) 337-5777.

CC: CHISHOLM STUART & HOUSTON MARY ELLEN stucsr@gmail.com
WILLIAM PALMER wpconslts@telebyte.net

Interested Parties:

 JOCELYNE GRAY jocelyne.gray@doh.wa.gov
 PETER STEFANIC pstefanic@aol.com

KITSAP COUNTY HEARING EXAMINER

DECISION ON RECONSIDERATION

**In the Matter of CUP Decision Approving
Olalla Valley Vineyard & Winery
File No. 16 01455**

May 8, 2017

The Kitsap County Dept. of Community Development ("DCD") requested clarification on ADA requirements and asked the Examiner to reconsider the determination that the seasonally used grass parking area is pervious. While the motions are denied in part, the CUP shall be amended to include a condition requiring a final review by a qualified professional.

1. Clarification - ADA Requirements.

DCD requested a clarifying condition stating that ADA compliant bathroom facilities are required for any event over 35 people. According to DCD, these facilities can be supplied by either modifying the tasting room building or providing ADA compliant portable restrooms. In response, the Applicants confirmed they would comply with all applicable requirements, and no clarification is necessary.

As DCD notes, the CUP Decision requires compliance with all applicable building and fire code requirements. If ADA compliant bathroom facilities are required by code for events with more than 35 people, that is a CUP requirement, and no further clarification is required. In earlier comment, the Applicant noted, "If there are portable restrooms positioned on the property that are ADA accessible and at least one such portable restroom will meet that requirement, what is the issue?"¹ As DCD did not provide the code requirement the requested clarification is based on, it is difficult for the Examiner to resolve the dispute, to the extent there is one. In any case, the existing conditions require compliance with all relevant code requirements, so further clarification is not necessary.

2. Parking Area.

An impervious surface is one which prevents or impedes water flow. The term is defined in the County Code, with modifications made in 2016. These modifications clarified that impervious surfaces are unvegetated. The surface here is vegetated and the CUP requires that it remain so. Both definitions are included in the attachment to this reconsideration decision. While the code identifies parking areas as an example of an impervious surface, it does not specify that all areas used for parking, including pasture areas used on a seasonal basis for parking, are impervious. So, the code itself does not answer the question.

¹ Exhibit 23 (Applicants' Comment), p. 15. The Applicants provided examples of such facilities. See Exhibit 38.

Whether or not the grass parking area is or will prove to be impervious at this site is a question of fact. At one level, this is a simple question - where will stormwater flow? Will it infiltrate within the parking area or flow outside of it? For a paved surface or a roof top, it is a simple matter to observe the rain falling and the fact that it runs off the surface into gutters or storm pipes. Obviously, a surface functioning in such a way is impervious. Technical expertise is not required to assess that. However, how a grassy area used primarily for seasonal parking functions is not so obvious.

The most pertinent evidence in the record documenting the nature of the site is from the Applicants' engineer, who found that stormwater would infiltrate within the parking area. The Applicants submitted this letter to support their position on the pervious nature of the proposed grassy parking area. This letter was cited in the Examiner's CUP Decision on same.

[T]he proposed parking areas are to be utilized only during infrequent summer events, such as wine tasting parties, wedding or similar private parties. Based upon the most practical assumption, these type of events would most likely occur during late spring, summer or early fall periods. Of course, this is the time of year when rainfall frequencies and quantities are at the lowest levels. Therefore, potential stormwater runoff from a grassed area would be very minimal and consequently the grass would mitigate any water quality concerns.

Based upon your proposed site plan, I would recommend that the grass areas be **designated only as temporary parking areas for the events occurring during the dry summer months. This would preclude the need or creation of additional impervious areas, which would indeed require added water quality control features.** The grass covered areas actually act as water quality mitigation for any potential stormwater runoff from a parking area. I also notice that there is substantial native vegetation, tree and shrub cover areas adjacent to the proposed temporary parking lots. It appears that there is sufficient distance for any runoff to disperse within these areas and therefore enter the natural hydrology of the site.

Those vegetated areas are also accepted and qualified mitigation features for stormwater runoff control per the Code. We have used this design method on other projects that have infrequent parking usage. It is a cost effective and environmentally friendly usage of the land for temporary parking, and in certain instances, also for permanent parking. ... [I]t appears that your design concept is appropriate from a stormwater mitigation standpoint.²

The engineer reviewed the "design concept," and explained that the conceptual design would avoid the need to create "additional impervious areas." To come to these conclusions, the engineer assumed the area would serve as temporary parking during the summer months, explaining that if implemented as proposed, new impervious surface area would not be created.

² Exhibit 43, attachment, emphasis added.

DCD attached various materials to its reconsideration motion. Although the record is closed at this point, the Applicants presented no objection to the materials. However, whether considered or not, they do not address this specific situation.

- The first attachment addresses farm equipment soil compaction by machinery that can weigh considerably more than the average car. As the paper notes, "[t]wenty-first century farm economics stimulate farmers to increase the size of their operations. ... liquid manure spreaders may weigh 20 or 30 tons." This situation does not involve heavy farm equipment, but cars. They weigh considerably less (about two tons on average). Nor does this situation involve vehicular movement on bare soils. Also, while the attachment addresses agricultural soil compaction, it does not address to what extent those soils become impervious from the farm equipment.
- The second attachment also raises similar issues, as it too addresses heavy farm machinery.
- The third attachment appears to be an advertisement for turf management services. It identifies measures for relieving turf compaction, such as aeration (where holes are made in the turf to relieve compaction). Such measures may very well be relevant, but they emphasize what a property owner can do to manage a lawn surface to alleviate compaction issues, rather than addressing whether this particular surface is pervious or impervious. Also, as an advertisement, this type of evidence cannot be given the same weight as analysis prepared by a qualified professional (an engineer in this case) who prepared an analysis based on this specific proposal.

DCD is composed of professionals with extensive experience and credentials in a variety of areas of expertise. On this particular issue, however, the engineering analysis the Applicants provided was most relevant to the point in contention. Also, it was significant that the use has been in operation for eight years and the grassy area has remained pervious, as the photographs documented. (The Applicants have not "slowed or altered their operations of the business since the property acquisition.")³

However, the Examiner appreciates DCD's concerns over the Examiner's original assessment. Thus, the Examiner will revise the CUP to require the Applicants' engineer to confirm that after the height of next season's operation, the grass parking area is operating as originally contemplated and as outlined in the engineer's analysis, and the area remains pervious in nature. If this is not accomplished, DCD's originally proposed conditions will be triggered and followed. This may not be an ideal resolution for either party. However, it provides a simple and efficient procedure for a qualified professional to confirm the accuracy of the engineer's original assessment.

In assessing the larger issues at play here, the code objective is to reduce impervious surfaces so that water infiltrates to the aquifer and both stormwater and stormwater pollutants are cost-effectively managed. This is an important issue, and one the County has devoted considerable resources and attention to. The Applicants' engineer addressed these concerns in

³ Exhibit 17 (DCD response letter to Applicants, p. 1). See also Ex. 19 (Health District, well site inspection notes), referenced in the original CUP Decision.

his comment, and the Examiner notes in addition that although only 15% of the site need be landscaped, over 75% of it is, which assists with addressing stormwater.

There are a variety of ways for DCD to address this type of situation in future, should further attention be needed. For example, DCD could provide brief technical analysis on the specific proposal; a code clarification or amendment could be requested; or, DCD could have a qualified professional outline certain measures that, if followed, would ensure such a use does in fact remain pervious and Title 12 objectives continue to be served.⁴

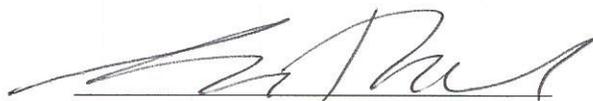
The Examiner emphasizes that this Decision in no way precludes another grassy area serving as a parking area from being treated as impervious.⁵ But based on the unique facts of this particular situation, which included, among other factors, the engineering analysis, temporary parking, and past usage (of the type the CUP authorizes), which had not resulted in impervious surfaces, the Examiner was unable to find that with the use as proposed, the grassy area should be viewed as impervious. However, to confirm this determination, a qualified professional shall confirm same, through the below outlined condition.

3. New Condition - Condition 30.

After September 1, 2018, but before October 1, 2018, the Applicants' engineer shall confirm in writing, through succinct written analysis submitted to DCD, that the grass parking area is operating as originally contemplated and as outlined in the engineering analysis dated March 23, 2017, and remains pervious in nature.

Following a written reminder from DCD to the Applicant, if this confirmation does not occur, the grass parking area shall be treated as an impervious surface, a Site Development Activity Permit shall be required and the original proposed Stormwater Conditions 2, 3, and 4 from the March 23, 2017 Staff Report shall be adhered to, along with Staff Report Condition No. 9 regarding the need for a buffer reduction for the wetland buffer.

THIS DECISION is entered this 8th day of May, 2017.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond

⁴ One note, in designing regulatory regimes, if the goal is to discourage the creation of impervious surfaces, it could make sense to ease off on permitting requirements when an applicant opts into certain measures to avoid creating impervious surfaces. Of course, with regard to pollutant management, the ideal situation is to have cars which do not produce pollutants to either the air-shed or our waterways. While technically feasible, the market is not there yet. However, how to structure regulatory systems are policy matters, and outside of Examiner purview.

⁵ The Examiner notes DCD's reference to past hearing examiner decisions on impervious surfaces. Those decisions are not in the record so are difficult to evaluate. However, the decision here is not a legal one, but is based only on the facts of this particular situation and the record developed in this case.

Attachment 1 - Definitions

“Impervious surface” means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of storm water. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for purposes of determining whether the thresholds for application of minimum requirements are exceeded. Open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of runoff modeling.⁶

"Impervious surface" means a non-vegetated surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A non-vegetated surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for purposes of determining whether the thresholds for application of minimum requirements are exceeded. Open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of runoff modeling.⁷

⁶ KCC 12.08.010(36).

⁷ KCC 12.08.245, amended earlier definition, in 2016 per Ordinance 540-2016.