



MEMORANDUM

TO: Board of County Commissioners

FROM: Nathaniel Miller, Associate Planner

DATE: February 14, 2024

RE: Consideration to Hear - Deschutes County Land Use File Nos. 247-22-000464-CU, 466-SP, 24-018-A.

The Board of County Commissioners (Board) will conduct a meeting on February 14, 2024, and consider hearing an appeal of a Hearings Officer Decision (File Nos. 247-22-000464-CU, 466-SP, 24-018-A) approving an application for a Commercial Activity in Conjunction with Farm Use (Winery).

I. BACKGROUND

The subject property is approximately 5.5 acres in size and is about 750 feet northwest of the City of Bend. Highway 97 is approximately 1,500 feet directly to the east. The property is addressed at 20520 Bowery Lane, Bend, and is further identified on County Assessor's Map 17-12-09B as Tax Lot 1000.

The Applicants, Duane and Dina Barker, have requested a Conditional Use Permit for a Commercial Activity in Conjunction with Farm Use to establish a Winery with associated uses in the Multiple Use Agricultural Zone (MUA10). The request also includes a Site Plan Review for the Winery and associated uses. The property owner proposes to convert a portion of an existing accessory building into a tasting room and office space. The proposal also includes the conversion of an existing barn for small-scale wine production and wine storage. The approval would include the production of up to 2,000 cases of wine annually as well as hosting wine related events on the property, wine tastings, wine dinners, and other wine marketing events directly related to the sale and promotion of wine produced from the vineyard. No new buildings or structures are included in the proposal.

The applications were submitted on June 7, 2022. An Incomplete Letter was mailed on July 7, 2022. On December 4, 2022, the applicants requested that the applications be deemed complete and 150-day clock tolled. The applications were referred to a Public Hearing on August 4, 2023. On September 15, 2023, the applicants then waived the 150-day clock.

The initial public hearing before the Hearings Officer was scheduled on Wednesday, October 10th, 2023. On October 6, 2022, the Applicant requested a 2-week continuance of the Public Hearing pursuant to DCC 22.24.140(A)(1). The Hearings Officer opened the initial hearing, but no testimony was received, and the new hearing date was set for October 24, 2023.

During the second hearing on October 24, 2023, Hearings Officer Brooks conducted a full hearing and testimony was received in support and in opposition to the proposal. An Open Record Period was set for 7 days of New Evidence and Testimony, 7 days for Rebuttal, and 7 days for the Applicant's Final Legal Arguments. The record was closed 21 days after the hearing on November 14, 2023.

II. DECISION

The Deschutes County Hearings Officer rendered a final decision approving the Applicant's request for a Conditional Use Permit for the Winery on January 2, 2024.

Staff notes the following salient elements of the Hearings Officer Decision:

- The Hearings Officer addressed issues raised in the Staff Report specific to Title 22 and the Deschutes County Procedures Ordinance. These include:
 - The appropriate signatures on the application form
 - The open Code Enforcement Case on the property
 - The noticing requirements for the application
- The proposal meets the requirements of DCC 18.32.030(C) and qualifies as a Commercial Activity in Conjunction with Farm Use.
- The proposal likely conforms to the Site Plan Review standards of DCC 18.116 and DCC 18.124, however more detail is required. The Hearing Officer included 33 conditions of approval in the decision.
- The proposal meets the suitability requirements of DCC 18.128.015

III. APPEALS

Applicant

The Appellant (Toby Bayard) submitted a timely appeal to the Hearings Officer's Decision on January 9, 2024. The Appellant requests the Board initiate a review and conduct a hearing to evaluate the following issues:

- Whether wineries can only be cited on property in the Exclusive Farm Use Zone pursuant to ORS 215.452, and not in any other zone.

- Whether the Hearings Officer erred in finding that a winery can be approved on MUA10-zoned property as a Commercial Activity in Conjunction with Farm Use.
- Whether there is inconsistency from the Hearings Officer between the subject applications and the previous approval under Deschutes County File No. 247-22-000024-CU, 22-025-SP, 22-757-A, 22-914-A (Commercial Activity in Conjunction with Farm Use for a Meadery in the EFU Zone).
- Whether the Hearings Officer erred in the incorporation of testimony placed into the public record.

The Appellant is requesting the Board waive the transcript requirements outlined in DCC 22.32.024(D).

IV. BOARD OPTIONS

There are three versions of Order No. 2024-006. In determining whether to hear an appeal, the Board may consider only:

1. The record developed before the Hearings Officer;
2. The notice of appeal; and
3. Recommendation of staff.

In addition, if the Board decides to hear the appeal, it may consider providing time limits for public testimony.

Reasons to hear:

- The Board may want to take testimony and make interpretations relating to the Hearings Officer's decision.
- The Board may also want to reinforce or refute some, or all, of the decision findings/interpretations prior to Land Use Board of Appeals (LUBA) review.
- The Board may want to accept additional application materials which address the numerous conditions of approval in the decision and confirm compliance with the applicable criteria of DCC 18.116 and DCC 18.124.

Reasons not to hear:

- The Planning Division believes the Hearings Officer issued a well-reasoned decision.

If the Board decides that the Hearings Officer's decision shall be the final decision of the county, then the Board shall not hear the appeal and the party appealing may continue the appeal as

provided by law. The decision on the land use applications becomes final upon the mailing of the Board's decision to decline review.

V. STAFF RECOMMENDATION

If the Board decides to hear the appeal, staff recommends a *de novo* review which allows the Board to consider the entire record and include new evidence and testimony as they see appropriate. As noted above, a public hearing before the Board would allow for additional testimony and application materials which could confirm compliance with the criteria of DCC 18.116 and DCC 18.124. As outlined above the 150-day review clock for the application was waived by the applicant.

VI. RECORD

The record for file no. 247-22-000464-CU, 466-SP, (Appeal file No. 247-24-000018-A) is as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-22-000464-cu-247-22-000466-sp-lava-terrace-cellars-winery-vinyard>

Attachments:

Document	Item No.
2024-02-14 BOCC DRAFT Order 2024-006 De Novo	1
2024-02-14 BOCC DRAFT Order 2024-006 Limited De Novo	2
2024-02-14 BOCC DRAFT Order 2024-006 Decline to Hear	3
2024-02-14 Location Map - 247-22-000464-CU, 466-SP, 24-018-A	4
2024-02-14 Hearings Officer Decision 247-22-000464-CU, 466-SP	5