



## MEMORANDUM

**TO:** Deschutes County Board of County Commissioners

**FROM:** Nathaniel Miller, Associate Planner

**DATE:** April 1, 2024

**RE:** Work Session: A Commercial Activity in Conjunction with Farm Use (Winery) in the Multiple Use Agricultural Zone.

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The Board of County Commissioners (Board) will conduct a Work Session on April 1, 2024, in preparation for a Public Hearing on April 10, 2024, to consider a request for a Commercial Activity in Conjunction with Farm Use to establish a winery. The applications and appeal are identified as file nos. 247-22-000464-CU, 466-SP, 24-018-A. 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. A location map is included as **Attachment A**.

### I. BACKGROUND

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. HEARING OFFICER 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. APPEAL**

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 nos. 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.

#### **IV. RECORD**

The record for file nos. 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>

#### **V. NEXT STEPS**

Based on the feedback received from the Board at the Work Session, Staff will prepare for the upcoming Public Hearing.

#### **ATTACHMENT(S):**

**Attachment A** - 2024-04-01 BOCC Work Session – Subject Property Location Map