



MEMORANDUM

TO: Deschutes County Board of County Commissioners

FROM: Nathaniel Miller, AICP, Associate Planner

DATE: January 25, 2023

RE: Public Hearing: A Commercial Activity in Conjunction with Farm Use (Meadery) in the Exclusive Farm Use Zone.

The Board of County Commissioners (Board) is conducting a Public Hearing on January 25, 2023, to consider a request for a commercial activity in conjunction with farm use to establish a Meadery. The applications and appeals are identified as file nos. 247-22-000024-CU, 22-025-SP, 22-757-A, 22-914-A. The subject property is located approximately 0.5 miles southeast of the city limits of Sisters along Highway 20 which borders the property to the southwest. The property is addressed at 68540 Highway 20, Sisters, and is further identified on County Assessor's Map 15-10-10 as tax lot 700. A location map is included as **Attachment A**.

I. BACKGROUND

The Applicant, John Herman, has requested a Conditional Use Permit for commercial activities in conjunction with farm use to establish a Meadery (Honey Winery) with associated uses in the Exclusive Farm Use Zone (EFU), and within the Airport Safety (AS), Surface Mining Impact Area (SMIA) and Landscape Management (LM) Combining Zones. The request also includes a Site Plan Review for the Meadery and associated uses. The proposed Meadery would be situated on the southern portion of the property along Highway 20 and within the existing developed building, lawn, and road network. The Meadery Production and Meadery Operations (processing & tasting room) would be centralized in an existing farm structure (Winery Building) with the Winery Related Events and parking areas around this location.

On September 7, 2022, the Deschutes County Planning Division administratively approved a conditional use permit and site plan request (file nos. 247-22-000024-CU, 247-22-000025-SP) for the proposed Meadery. An appeal was filed on September 19, 2022, by Central Oregon LandWatch (file no. 247-22-000757-A) to that decision requesting a Public Hearing. The initial Public Hearing before the Hearing's Officer was conducted on Wednesday, October 26th, 2022. The Hearings Officer

issued a decision on November 18th, 2022, which denied the proposal. On November 29, 2022, the applicant filed an appeal to the Hearing Officer decision (file no. 247-22-000914-A) requesting a *limited de novo* review from the Board. In a Consideration to Hear meeting on December 21, 2022, the Board agreed to hear the appeal *de novo* in a Public Hearing.

II. PUBLIC COMMENT

The Planning Division mailed notice of the conditional use application and site plan review to all property owners within 750 feet of the subject property on December 12, 2021. The applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. Staff has also mailed two notices of decisions and two notices of public hearings in accordance with Deschutes County's procedures ordinance. Public comments to the record are summarized below:

- Central Oregon LandWatch contacted the Planning Division on January 28, 2022, with concerns that the proposal did not meet the applicable criteria.
- Neighbor, Matt Cohen contacted the Planning Division on February 14, 2022, with concerns about the how access points on Highway 20 can accommodate increased traffic volumes.

III. APPEAL FROM CENTRAL OREGON LANDWATCH (247-22-000757-A)

As noted above, Central Oregon LandWatch filed a timely appeal on September 19, 2022, to the staff decision. The Notice of Appeal from Central Oregon LandWatch includes six (6) main points of objection, which staff summarizes and include below:

- The decision violates ORS 215.416(8) which requires that approval or denial of a permit application must be based on standards and criteria that are set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and relates approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur.
- There is neither state nor local law permitting a meadery on EFU land.
- Mead is neither a wine nor a beer, and a set of beehives is not a vineyard. There is no legal basis for finding a meadery is an allowed use in the EFU zone.
- ORS 215.203 authorizes counties to adopt ordinances establishing EFU zones, which limit the use of the land therein to "farm use except as otherwise provided in ORS 215.213, 215.283 or 215.284." ORS 215.203(1). A Meadery is not a listed use.
- ORS 215.452 regulates wineries based on the characteristics of a vineyard, which are distinct from the characteristics of beehives.

- There is no evidence on which to base a finding that a meadery will yield an income incidental to the income from current mead sales, as there is no evidence of any mead sales.

IV. HEARING OFFICER DECISION

The Deschutes County Hearings Officer rendered a final decision denying the Applicant's request for a conditional use permit for the Meadery on the grounds that:

- The applicant has not satisfied the standard for a Commercial Activity in Conjunction with Farm Use demonstrating that the Meadery use will be incidental and subordinate to the farm use on the property. These standards are outlined in DCC 18.16.030(E) with the incorporation of relevant case law *Friends of Yamhill County v. Yamhill County*, 255 Or App 636, 298 P3d 586 (2013)¹.
- The applicant did not adequately address impacts to farm uses in the area pursuant to Deschutes County Code (DCC) 18.16.040(A) (1) and (2).² The corresponding Oregon Revised Statute (ORS) is ORS 215.296(1), which is also known as the "Farm Impacts Test".

V. APPEAL FROM APPLICANT (247-22-000914-A)

The Applicant (John Herman) submitted a timely appeal of the Hearings Officer's decision on November 29, 2022. The Applicant requested the Board conduct a Public Hearing to review the following issues:

- Whether the Hearings Officer erred in finding the Applicant did not demonstrate that the Meadery use will be incidental and subordinate to the farm use on the property and fulfill the requirements of DCC 18.16.030(E).

The Hearings Officer found that the *"...Applicant simply has not attempted to quantify the magnitude of the farm use or the magnitude of the non-farm commercial activities. Some attempt at quantifying those activities is necessary if they are to be compared for the purpose of identifying a primary use and a secondary use."* The Hearings Officer further states: *"...I find that the Application must be denied because the Applicant has not met its burden of demonstrating the*

¹ The Oregon Court of Appeals has developed a test for evaluating commercial activities in conjunction with farm use. *Friends of Yamhill County v. Yamhill County*, 255 Or App 636, 298 P3d 586 (2013). It requires four findings:

1. The use relates to a farm use occurring on the subject property; and
2. Any commercial activity beyond processing and selling farm products must be incidental and subordinate to the farm use (frequency and intensity when compared to the farm use on site, spatially, operating hours); and
3. The use enhances the quality of the agricultural enterprise; and
4. The use promotes the policy of preserving farm land for farm use

² 1. Will not force a significant change in accepted farm or forest practices as defined in ORS 215.203(2) (c) on surrounding lands devoted to farm or forest uses; and 2. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

Meadery – as proposed – will be incidental and subordinate to a primary farm use on the Subject Property.”

- Whether the Hearings Officer erred in finding that the Applicant did not fully satisfy the requirements of DCC 18.16.040 (A) (1) and (2), being the Farm Impacts Test.

The Hearings Officer found that *“...the record does not include a description of the farm practices on surrounding lands devoted to farm use, nor does it include any explanation for why the proposed development will not force a significant change or cost to those practices.”* The Hearings Officer further states: *“Without any analysis of the accepted farm practices that are associated with the identified farm uses, I cannot make a factual finding regarding the existence of those farm practices, or a finding that it is more likely than not that the Meadery will not force a significant change to those farm practices.”*

- Whether the applicant and subject property is currently engaged in farm activities with the intent to make a profit in money.

Under the heading of: *Is the Subject Property currently in farm use?*, the Hearings Officer found that *“...while it is an extremely close call, I find the Applicant has provided more than mere testimony that it has sold crops. The Applicant has also testified that there has been a gross profit from those sales and that the revenue earned has been reinvested in the farming operation. Based on this record, and although the Applicant has provided little corroboration of revenue from the current farm, I find it more likely than not that the Subject Property is currently in farm use.”*

VI. BOARD CONSIDERATION

The Board has agreed to hear the appeal *de novo*. The Board will hear and consider the report by staff, the applicant's presentation and written submittal, and any member of the public that wishes to give testimony or provide written comments. The record is available on the project website listed below.

VII. 150-DAY LAND USE CLOCK

The application for 247-22-000024-CU, 247-22-000025-SP was considered complete and the 150-day clock was started on July 15, 2022. The applicant initiated the first toll from September 21, 2022, to September 23, 2022, which extended the clock by two (2) days. The applicant initiated the second toll on November 29, 2022, to March 29, 2023, which extends the clock by one hundred and twenty (120) days. With the tolls from the applicant, the original 150-day clock is extended past the original 150th day noted in the decision as December 12, 2022.

The 150th day on which the County must take final action on this application is April 13, 2023.

VIII. RECORD

The record for file nos. 247-22-000024-CU, 247-22-000025-SP (appeal file nos. 247-22-000757-A and 247-22-000914-A) is as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-22-000024-cu-and-247-22-000025-sp-conditional-use-and-site-plan-review-meadero>

IX. NEXT STEPS

At the conclusion of the Public Hearing, the Board can choose one of the following options:

- Continue the hearing to a date and time certain;
- Close the oral portion of the hearing and leave the written record open to a date and time certain;
- Close the hearing and commence deliberations; or
- Close the hearing and schedule deliberations for a date and time to be determined.

ATTACHMENT(S):

Attachment A - 2023-01-25 Location Map 22-024-CU, 22-025-SP, 22-757-A, 22-914-A

Attachment B - 2023-01-25 Hearing Officer Decision 22-024-CU, 22-025-SP, 22-757-A

Attachment C - 2023-01-25 Appeal 247-22-000914-A