



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 29, 2024

SUBJECT: Request to reopen the record on the matter concerning a commercial activity in conjunction with farm use (Lava Terrace Cellars) in the Multiple Use Agricultural Zone

RECOMMENDED MOTION:

Move approval of Order 2024-019, reopening the record for Appeal No. 247-22-000018-A through August 7, 2024 at 4 p.m.

Or

No action. In this case, Board deliberations for the proposal will be scheduled at the earliest available time.

BACKGROUND AND POLICY IMPLICATIONS:

On April 10, 2024, the Board held a public hearing on an appeal of the Hearings Officer's approval of applicant's application for a commercial activity in conjunction with farm use (winery) in the MUA-10 zone, file numbers 247-22-000464-CU, 466-SP and 24-018-A. The Board received testimony from the applicant, the appellant, and members of the community. An open record of 7-7-7 was granted after the public hearing, as follows:

- New Evidence & Testimony Phase – until Wednesday, April 17th at 4pm
- Rebuttal Phase – until Wednesday, April 24th at 4 pm
- Final Argument Phase (Applicant Only) – until Wednesday, May 1st at 4pm

On Tuesday, May 21, 2024, Planning Division staff received a request from the applicant that the record be reopened to accept additional evidence from the applicant and appellant. The Board, as the hearings body, has discretion and authority to reopen the record either upon request or on its own initiative under DCC 22.24.160(A). The Board further has discretion and authority to choose between granting a continuance or leaving the record open under DCC 22.24.140(B).

Should the Board decide to exercise its discretion and authority to reopen the record, the

applicant requests that the Board consider including the following schedule in its Order:

- Reopen the record at the Board's May 29, 2024 public meeting;
- Allow the record to remain open through July 31, 2024 for submission of written testimony and evidence by the parties; and
- Schedule Board deliberations for a date certain within a reasonable time after the record closes.

The applicant's request to reopen the record is included as Attachment A.

Deschutes County Code (DCC) Section 22.24.160(A) provides the Hearings Body (Board) authority to reopen the record at its own discretion, either upon request or on its own initiative, when the applicant has agreed to an extension of, or waived, the 150-day clock. Staff notes that the applicant waived the 150-day clock on September 15, 2023. The request is consistent with this criterion.

Deschutes County Code (DCC) Section 22.24.160(B)(1) provides the Hearings Body (Board) discretion and authority to reopen the record for either oral or written testimony. Staff notes that because DCC Section 22.24.140(B) requires the Board to make a choice between granting a continuance or leaving the record open, and because there is no provision in the Code for the Board to hold an additional hearing, it would be difficult for the Board to accept oral testimony during the open record period. Therefore, staff suggests that the Board consider granting the applicant's request to reopen the record for written testimony only, which is consistent with this criterion.

Deschutes County Code (DCC) Section 22.24.160(B)(2) requires written notice to parties that the record is reopened. Parties are then allowed the opportunity to raise new issues that relate to the new evidence, testimony or criteria for decision-making that apply to the matter at issue. Staff will provide this notice at the direction of the Board if the Board grants the request to reopen the record.

Staff recommends that the duration of the reopened record period be limited from May 29, 2024, to August 7, 2024. At the end of any reopened record period, any party may request, or the Board may decide on its own initiative, to reopen the record again pursuant to DCC 22.24.160(A).

The draft Board Order (2024-019) is included as Attachment B.

BUDGET IMPACTS:

None

ATTENDANCE:

Nathaniel Miller, Associate Planner