



Staff Report and Recommendation Hearing Examiner Permit Revocation

Report Date December 2, 2021

Hearing Date December 16, 2021

Applicant/Owner, email

Stuart Chisholm, Mary Ellen Houston
PO Box 990
Olalla, WA 98359-0990
stuart@olallawines.com

Project Location

13176 Olalla Valley Rd
Olalla, WA
South Kitsap County
Commissioner District 2

Assessor's Account #

042202-1-007-2005

Project Representative/Engineer, email

NA

Permit Number

16-01455

Project Name

Olalla Valley Vineyard and Winery

Type of Application

Conditional Use Permit (CUP)

Zoning Use: 'Agricultural Use, Assembly Event, 16 events annually'

Specific activity: Public and Private Events and Wedding venue

State Environmental Policy Act

NA

Background

The Department of Community Development (DCD) is requesting that the Hearing Examiner revoke the Conditional Use Permit (CUP) (Permit 16-01455; Exhibit C-1)¹ for the Olalla Valley Vineyard and Winery, LLC (OVVW) for noncompliance with the scope and conditions of this permit. Stuart Chisholm and Mary Ellen Houston currently own and operate a public and private events and weddings venue called OVVW at 13176 Olalla Valley Rd in Olalla, WA.

Specifically, as demonstrated further in this staff report, over the course of several years OVVW has routinely exceeded the number of outdoor events permitted and the number of guests allowed on the property for events granted under their CUP approval. Just this year, OVVW also held an outdoor event in violation of the allowed timeframe for outdoor events approved in the CUP. OVVW has also not limited the wine tasting to by "appointment only" during the fall and winter as conditioned by the decision of approval and has established a wine and beer bar that was not

¹ Please also note a Request for Reconsideration to the original CUP is also added to this land use approval and is included as Exhibit C-2.

contemplated, conditioned nor approved in the CUP application and decision. Violation of these conditions have led to a multitude of complaints by neighbors as well as increased traffic and noise impacts to the surrounding area. These additional impacts were not analyzed in the CUP approval nor State Environmental Policy Act (SEPA) checklist and subsequent determination.

Additionally, OVWW has failed to follow their approved site plan for parking by parking outside of the approved parking area, as well as offering overnight accommodations for RVs, which was not included in their CUP application nor approved as part of Permit 16-01455. To remedy, DCD has made several attempts to obtain voluntary compliance from the property owners, yet violations have continued. This revocation request is a last resort by DCD and is only sought due to the continued noncompliance and impacts on the surrounding neighborhood. Additional concerns provided by neighbors with OVWWs venue are also included in this staff report as well.

According to DCD records and OVWW's website (<https://www.olallawines.com/>), the business plans to '*evolve the winery into a unique, boutique destination vineyard and winery, with a focus on agricultural tourism*' (Exhibit C-8). The website offers musical events, miscellaneous other outdoor events, weddings, an indoor facility to accommodate up to 35 people, retail sales, and monthly outdoor dinners during the summer for groups, and concerts. OVWW's 2016 application also notes arts, crafts, birthday, anniversary, and charity functions. Additionally, OVWW offers wine-by-the glass or bottle, a bar setting, and purchases of wine, beer, snacks, and 'picnic baskets' (some hot food is also occasionally available). The website advertises wine tastings by-the-glass available Wednesday through Sundays and that wine tastings stop at 4 PM on evenings when there is a concert. The bar has also been advertised alongside wine-by-the-glass offerings. Events such as weddings and concerts have no set days of the week, but typically occur on weekends.

The 5.98-acre site is zoned Rural Protection (RP). In the RP zone, agricultural uses are permitted with threshold allowances for ag-related uses and agritourism that require additional and higher-order review depending on the intensity of the proposal. The OVWW CUP was given approval for an events and wedding venue, as described earlier, on April 17, 2017. To reduce impacts on neighbors and ensure OVWW is compatible with the rural comprehensive plan and zoning designations, specific conditions were included as part of the CUP approval for events and the operation of the tasting room. To date, conditions have been violated and the applicant continues to operate in violation of CUP approval. The 2017 CUP approval (Exhibit C-1) specifies the following conditions. DCD's explanation and documentation of the violations follow in italics.

Conditions 19 and 21 Limit the Use to that Proposed in the Application and Approved in the Original Decision

Condition 19

The uses of the subject property are limited to the uses proposed by the applicant and any other uses will be subject to further review pursuant to the requirements of the Kitsap County Code (KCC). Unless in conflict with the conditions stated and/or any regulations, all terms and specifications of the application shall be binding conditions of approval. Approval of this project shall not, and is not, to be construed as approval for more extensive or other utilization of the subject property.

Condition 21

The decision set forth herein is based upon representations made and exhibits contained in the project application 16-01455. Any change(s) or deviation(s) in such plans, proposals, or

conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.

The use proposed by the applicant is documented in the CUP approval (Exhibit C-1):

- *Finding 1.11 (operating hours, number of events per month, maximum numbers of people),*
- *Conclusion of Law 2.2.9 (100 people maximum for outdoor events), and*
- *Conclusion of Law 2.2.10 (100 people maximum for outdoor events) of the CUP Decision.*

The use is also outlined in representations made in the March 23, 2017 Staff Report to the Hearing Examiner (Exhibit C-3) and the applicant's March 11, 2016 Project/Supplemental Application (Exhibit C-4) and the SEPA Determination of Nonsignificance (DNS) (Exhibit C-6).

(Collectively, this report hereafter may refer to Exhibits 1, 2, 3 and 4 as "the CUP and supporting documents"). Specifically, the use proposed was for a limited events venue that did not generate noise beyond low-level noise from traffic and patrons visiting the site. The event venue proposed was intended to be accessory to the primary use of the property as a winery and was to continue the previous use by the prior owner which generated little impact on the surrounding rural residential properties.

The wine tasting facility and, in particular, the meeting/events space availability offer the opportunity to hold tastings, public and private events throughout the year, wherein musical, arts and crafts functions can be held. In the past, wreath-making, lavender festivals, antique events, charity functions and such have been held at Olalla Valley Vineyard & Winery. The new owners wish to continue that tradition. These cultural and charitable events, held on weekends, create community bonds, provide the Olalla and Kitsap communities an attractive weekend destination, reinforce the-winery identity in Kitsap County and enhance its reputation as a destination location.

Project Narrative (Exhibit C-4) page 1.

The primary business is the production and sales of wine directly via the tasting room and via Olalla Wines wine club. The intent is not to become a "wedding events venue" or an "events location" in general, rather such events will be necessary to help achieve our wine sales targets and, of course, such events will encourage tourism into Olalla and surrounds.

Project Narrative (Exhibit C-4) page 2.

3. Private Events: Meetings, Birthday parties, weddings etc. by prior arrangement (Weddings - June thru September only). Outdoor events will run to 9pm during the summer months, allowing for one hour of clean-up and trash removal from site at the end of every event.

4. Public Events: Musicians (folk, blues, jazz) on Friday evenings and/or Saturday afternoons. Attendance to be limited by prior sign-up via Olalla Wines web-site. A Maximum of 100 people for outdoor events and 35 people for indoor events will be enforced.

Project Narrative (Exhibit C-4) page 3.

Applicants intend to continue the existing vineyard, winery, wedding and event operations upon CUP appl. (sic)
SEPA Checklist answer to question A.6 (Exhibit C-4).

The applicants propose to continue the operations mentioned above on this site as carried out by the previous property owner. Wine tasting, community events and weddings will be held on the site.
SEPA Checklist answer to question A.11 (Exhibit C-4).

The site will generate very low levels of traffic noise and movement noise from patrons of site on weekends.
SEPA Checklist answer to question B.7.b.1. (Exhibit C-4).

The events aspect may include indoor public events such as music, arts and crafts events, charity functions, and private events such as birthdays, anniversaries, etc., primarily held on weekends throughout the year. They also plan to hold two to four weddings and/or outdoor events per month on the weekends during May through September.
SEPA DNS (Exhibit C-6).

Conditions 19 and 21 ensure that the CUP approval is limited to the use as proposed by the applicant and approved by the Hearing Examiner in 2017. Expansion of the use and any additional new uses are subject to further permitting by DCD unless specifically allowed by the use table. As documented below, OVWV has expanded their use without amending the CUP and is in violation of the CUP conditions.

Violation – Number of Events, Timing of Events

The number of monthly outdoor events has routinely been exceeded, and at least one outdoor event was held outside of the timeframe allowed. The CUP decision Finding 1.11 states the number of outdoor events allowed seasonally at OVWV:

Outdoor events, to include two to four wedding and/or other events per month, would operate June through September, from noon to 9:00 p.m., for a maximum of 100 guests. Temporary tent structures may be used for outdoor events. Indoor events for a maximum of 35 people would occur in the existing winery building throughout the year, but primarily on weekends, from noon to 9:00 p.m.

The limitation on outdoor events is also stated in the Staff Report (Exhibit C-3) to the Hearing Examiner as well as The Proposal Summary, further detailed in the Project Request and Analysis; Land Use, Planning and Zoning (Exhibit C-3); and The Supplemental Application for the CUP (parent) Application and the associated Narrative (Exhibit C-4):

The events aspect may include indoor public events such as musical, arts and crafts, and charity functions and private events such as birthday, anniversary, etc., primarily on weekends throughout the year. They also plan to hold 2 to 4 weddings and/or outdoor events per month on the weekends during June, July, August and September.

Staff Report (Exhibit C-3) page 1.

The events aspect may include indoor public events such as musical, arts and crafts, and charity functions and private events such as birthday,

anniversary, etc., primarily on weekends throughout the year. They also plan to hold 2 to 4 weddings and/or outdoor events per month on the weekends during June, July, August and September.

Staff Report (Exhibit C-3) page 8.

Proposal is to continue the vineyard and winery business and add an event venue on weekends to include weddings – 2-4 per mo. – May-Sept.

Supplemental Application (Exhibit C-4) page 1.

The following table indicates the months where the outdoor events at OVVW exceeded the maximum four outdoor events allowed by the CUP and where an outdoor event was held outside of the permitted timeframe of June through September.

Date	County Exhibit(s)	Events
July 2019, 7 Events	10, 11	<ol style="list-style-type: none"> 1. 7/5 – The Olson Brothers 2. 7/6 – Dinner at the Vineyard 3. 7/12 – Octopus Ballet 4. 7/18 – Paint and Sip 5. 7/19 – Joel and the Hired Guns 6. 7/26 – Budapest West 7. 7/27 – Dinner at the Vineyard
August 2019, 8 Events	10, 11	<ol style="list-style-type: none"> 1. 8/2 – Flor de Juna 2. 8/2 – Rio Nova 3. 8/3 – The Shy Boys 4. 8/9 – Mark Hurwitz and Gin Creek 5. 8/16 – Kenny Callahan 6. 8/18 – Daring Greatly 7. 8/23 – Two strings in a Box 8. 8/30 – Two Macs and Friends
June 2021, 6 Events	12	<ol style="list-style-type: none"> 1. 6/4 – Fab Three 2. 6/5 – Opener 3. 6/11 – Go Jazz Quartet 4. 6/18 – Salsa Lessons 5. 6/19 – Joel Gibson Junior 6. 6/25 – Olson Brothers
July 2021, 5 Events	12, 13, 40	<ol style="list-style-type: none"> 1. 7/1 – Grapes and Goats 2. 7/2 – WEPA in the Vineyard 3. 7/3 – Wedding 4. 7/16 – Budapest West 5. 7/24 – Delores in the Vineyard 6. 7/31 – Shy Boys
May 2021	42	<ol style="list-style-type: none"> 1. 5/28 – NW Chillin'

Violation – Exceeding Allowed Number of Attendees

The maximum number of attendees has also routinely been exceeded. The CUP Decision Finding 1.11 and Conclusions of Law 2.2.9-10 clearly state that the maximum number of attendees for outdoor events proposed is 100 persons. The CUP Decision is consistent with

the Staff Report to the Hearing Examiner (Proposal Summary, further detailed in the Project Request, Analysis; Land Use, Planning and Zoning, and Analysis; Parking) (Exhibit C-3), as well as the Supplemental Application for the CUP (parent) Application's associated Narrative (Exhibit C-4).

The following table indicates the dates where the events at OVWW exceeded the maximum number of attendees as limited by the CUP.

Date	County Exhibit(s)	Event
6/21/19	10, 11	>100 people (117) Chimes and Vines (Ray Hammer)
6/28/19	10, 11	>100 people (129-162) Sweet Mary
7/5/19	11	>100 people (135) The Olson Brothers
7/12/19	10	>100 people (165) Octopus Ballet
7/19/19	10	>100 people (302) Joel and the Hired Guns
8/ 2/19	10	>100 people (141) Flor de Luna
8/3/19	10, 14	> 100 people (486) The Shy Boys

Between the end of 2019 and 2021 the OVWW website was modified such that attendees or projected attendee numbers are no longer visible. However, several of the bands that had attendance greater than 100 in 2019 had repeat performances in 2021 including:

1. The Olson Brothers – 6/25/21
2. Budapest West – 7/16/21
3. The Shy Boys – 7/31/21
4. The Octopus Ballet – 8/13/21

Based on the attendance success of the previous engagements, and continuing complaints about events in 2021 similar to those reviewed in 2019, it is likely that the 2021 attendance for events 1 – 4, above, also exceeded 100.

Violation – Allowing Uses Not Authorized by the CUP or Kitsap County Code

Overnight RV Stays

The CUP approval specifically relies on its Findings of Fact, representations made in the March 23, 2017 Staff Report to the Hearing Examiner (Exhibit C-3) and the applicants March 11, 2016 Project/Supplemental Application (Exhibit C-4).

OVWW is authorizing RV stays as part of Harvest Hosts program, authorizing up to two RVs up to 29 ft in length (Exhibits C-17, 18, 43, 44, and 45). Hosting RVs on-site was not represented in the application, nor discussed in the staff report. Hosting RVs on-site was also not discussed or conditioned in the CUP decision (Exhibit C-1). The CUP decision relies on the request of the applicant and the subsequent staff report and recommendation. Any subsequent modification to the OVWW operations would warrant additional DCD review and decision.

Overnight RV stays as part of a business outside of a designated RV campground is an unclassified use. KCC 17.410.042. Any request to add overnight RV stays to a use would need to go through the permitting process to determine if allowed in the zone under a similar like use determination. KCC 17.410.030 (C); KCC 17.100.040.

Violation – Wine-tasting by-the-glass

OVVW advertises itself as a “wine tasting” destination. However, OVVW is instead operating its “wine tasting” as a “wine bar” with full glass tastings as noted on their website under the Tasting Room/Menu tab (printed as a list in Exhibit C-9; see also Exhibit C-46). OVVW also advertises a bar (a “drinking establishment” in Kitsap County zoning code parlance; Exhibit C-47) or a portable bar (Exhibit C-48). In the industry, wine tasting, as a part of a winery, is intended for guests to sample free winery products to build brand awareness of what is grown or produced on-site or otherwise available (OVVW imports and offers several other brands and products). While not directly applicable to OVVW, current Kitsap County Code (KCC) 17.455.030, adopted March 22, 2017, is useful as an example of the difference between a wine tasting facility and a bar. KCC 17.455.030 defines “Tasting room” as:

a facility or portion of a facility supporting a winery, brewery, cidery, or distillery where the public may sample products produced by the facility and which has ancillary farm-related retail sales not including restaurant style food service.

Emphasis added.

A “drinking establishment” is not permitted as a principle use in the Rural Protection zone. However, it may be permitted with conditions as an accessory use if identified in an application, staff report and Hearing Examiner decision.

OVVW’s CUP application was vested prior to Kitsap County passing an updated agricultural code in 2017. However, the 2017 code is useful as guidance on what is generally anticipated for a wine tasting room. Kitsap County Code allows a wine tasting room as an accessory agricultural use in the Rural Protection zone, provided that a tasting room has the associated winery licensed by the Washington State Liquor and Cannabis Board and that the tasting room receive an Administrative Conditional Use Permit (OVVW’s application received a higher-order CUP as part of a combined venue). KCC 17.455.060.H.1.d notes that the approval include:

A written agreement to not serve products in serving glassware, cups, or containers greater than a four-ounce capacity except when included in a town master plan² approved pursuant to Section 17.360C.030, glassware with larger capacity may be served with a conditional use permit;

In contrast, in the industry a “wine bar” is where wine is the focus of by-the-glass or bottle servings, though other products, such as cider or beer, may be offered to a lesser extent. In the CUP and its supporting documents, DCD did not analyze a wine bar, but it is understood that today wine by-the-glass is being sold in the tasting room. Please also note DCD is not concerned with wine being served by the glass for outdoor events since that was anticipated as part of the use.

The “bar” that is advertised on site is considered a “drinking establishment” by definition in KCC 17.110.228:

“Drinking establishments” means a business primarily engaged in the retail sale of alcoholic beverages for consumption on the premises, including night clubs, bars, and taverns. It shall not mean premises primarily engaged in the retail sale of food for consumption on the premises, where the sale of alcoholic beverages is clearly accessory and incidental (e.g., comprises less than twenty percent of the gross receipts). This definition excludes brew pubs.

² DCD notes there is no town master plan applicability in this instance.

Again, the application, staff report, and Hearing Examiner decision did not contemplate nor condition the approval for an accessory “drinking establishment.”

The CUP and supporting documents represent a tasting room that must comport with codes then, and still, in effect. Further, nowhere in the CUP nor supporting documents does OVWV represent that a wine or beer bar was going to be operated on-site as a function of wine tasting.

New Violation – Allowing Drive-in, Stop-in, or Free Admission to Indoor Events

The CUP approval provides for year-round indoor events, but visitation “by appointment only” for wine tasting room activities during the off season. CUP decision Condition 12 reads:

Winery/tasting room activities shall be limited to: May through October, Thursday through Saturday, noon to 6:00 p.m., and Sunday, 1:00 p.m. to 5:00 p.m.; November through April, by appointment only.

OVWV’s website states it is available for “drive-ins” November through April (Exhibit C-49). A November 26, 2021 tasting room event advertises “walk-in appointments” (Exhibit C-50). For a December 11, 2021 event spanning two sites, the tasting room is open noon to 6 pm, but with no mention of by appointment only (Exhibit C-51).

DCD believes OVWV has violated conditions 19 and 21 of the CUP by expanding its use without obtaining a CUP amendment.

Conditions 4, 9, and 14 Limit Parking to the Approved Parking Plan

CUP Decision (Exhibit C-1) Condition 4 states:

A final site plan shall be submitted which is generally consistent with the final revised March 20, 2017 site plan, excepting any corrections or changes required or appropriate to bring the site plan into conformity with this decision. The project shall be operationally consistent with that site plan. If the project proposal is modified from that shown on the final approved site plan, Development Services and Engineering may require additional review and potentially new conditions.

Condition 9 states:

The updated site plan shall be submitted within 90 days of this decision. The approved site plan shall become the official site plan of record.

Condition 14 states:

The updated site plan shall show the planned parking configuration, which shall comply with applicable code requirements, including setback and fire access requirements.

The required updated site plan, dated May 25, 2017, was provided by the applicant on June 18, 2017 (date stamped June 19, 2017) (Exhibit C-5).

Violation – Parking for Events in Contrast to Approved Parking

Exhibits C-15, 16, and 36 shows parking outside of the approved parking area. Limited observation shows vehicles parked along the entrance into the site. Aerial images (Exhibits C-53-55) show clear tire treads in areas not approved for parking and permanent plantings in areas designated for parking.

DCD believes OVWV has violated its parking plan and conditions 4, 9, and 14 of the CUP.

Conditions 20 and 22

Condition 20

The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

Condition 22

A violation of the conditions of approval shall be grounds to initiate revocation of this Conditional Use Permit. Before revocation occurs, the Applicants shall be afforded a reasonable opportunity to cure the violation.

DCD has attempted to work with OVWW of noted violations and remedy violations on multiple occasions and via phone conversations. Efforts to date to seek resolve through voluntary compliance have not materialized and as summarized as follows:

DCD first voiced its concerns to OVWW with a September 17, 2019 letter (Exhibit C-19) that, among other issues, advised DCD was receiving complaints about the number of events and people attending the events. DCD advised it was concerned OVWW was acting out of compliance with its CUP and that it wished to meet with OVWW. There was no response.

In a letter dated October 29, 2019 (Exhibit C-20), DCD reminded OVWW of its September 17, 2019 letter and asked for another meeting and a response by November 12, 2019.

In an email dated November 11, 2019 (Exhibit C-21), OVWW responded to the October 29, 2019 DCD letter stating they were advised no meeting was necessary as they believed they are in compliance with the CUP. Their response indicates, among other things, that OVWW averages their events over a 12-month period, instead of up-to-four events monthly, June – September, as the CUP stipulates.

In a letter dated May 28, 2020 (Exhibit C-22), DCD advised OVWW that it appears OVWW has violated conditions of its CUP and was reminded of key conditions. DCD advised that it had documentation of more than 4 events occurring in September and that it had photographic evidence of more than 100 persons in attendance at an event. The letter explains that immediate compliance is being requested, and that there are permitting options to modify the terms of the CUP. The letter further advises Condition 22 of the CUP regarding revocation if compliance cannot be achieved. The letter attaches the CUP decision.

In an email dated June 17, 2020 (Exhibit C-23), DCD responds to a May 29, 2020 email from OVWW stating that “there is actually no reference in the list of conditions to the number of events nor is there a mention of the number of guests”. DCD advises that there is indeed a record of the up-to-four monthly number of events in the CUP decision, hearing testimony, the staff report, and the application.

In an email thread dated June 1, 2021 (Exhibit C-24), OVVW notes that they are cancelling a music event to come into compliance with the CUP. The OVVW email is in response to a DCD email of the same date advising that “4 events means 4 events and not 5 or more”. This DCD email was in response to another OVVW email of the same date stating that the season opener is not an event and that OVVW can have as many people on site as it would like and for as long as it would like, Covid restrictions notwithstanding, but that they are complying with a 10 PM noise restriction. This OVVW email was in response to another DCD email of the same date explaining that there are more than four events scheduled for the month of June 2021, and that revocation could occur unless OVVW comes into compliance with the CUP.

In a June 1, 2021 email (Exhibit C-25) that builds on parts of the thread above, OVVW notes their four outside event dates for the month of June.

In an email dated June 21, 2021 (Exhibit C-26), DCD Code Compliance Coordinator Kim Dunn advises that an email from Scott Diener, DCD DSE Manager will be entered into the case records. The subject email is the result of a phone call with Stuart Chisholm where OVVW and DCD had come to a verbal understanding of the CUP conditions regarding number of events and people in attendance. It is noteworthy that Diener’s email states “private events— wine tasting, birthdays, reunions, etc.—are not considered ‘event’s as the CUP discusses them.” This sentence omitted key reference to “indoor private events” as not having the same CUP conditions as outdoor events.

In an email dated July 12, 2021 (Exhibit C-27), DCD advises OVVW about 5 events that were planned in July, noise complaints and clarifications on Dba at the property line, and RVs staying overnight in the venue. Clarification is provided that compensation for events has no bearing on the CUP conditions of approval, and that there exists a reasonable opportunity to cure the violation(s) before proceeding to revocation.

In an email dated July 12, 2021 (Exhibit C-28), OVVW clarifies the number of music events for July (but, notably, not all events/weddings). OVVW acknowledges the overnighting of RVs, but argues lack of compensation exempts OVVW from regulatory authority.

In an email dated July 21, 2021 (Exhibit C-29), DCD advises OVVW about more than four events that were planned in July, that weddings are counted as events as characterized in the CUP decision and supporting documents, that noise continues to be a source of regular complaints, that RVs are not authorized under the CUP, that compensation has no bearing on the CUP, and more. DCD advises the remedy to correct the violations and advises revocation of the CUP may occur if not remedied.

In an email dated July 21, 2021 (Exhibit C-30), OVVW responds to the DCD email of July 21, 2021. The email provides OVVW’s interpretation of events and number of events, how noise is managed, how RV camping at the event is not subject to regulation, and more.

In a letter from Bill Palmer, WM Palmer Consultants, writing on behalf of OVVW, dated August 20, 2021 (Exhibit C-31). The letter provides Palmer’s interpretation of the number of events and what is public vs private, how OVVW manages noise, how RV stays are managed and will be managed, and more.

DCD believes it has afforded OVVW reasonable opportunity to cure the violations noted above. However, no remedy has occurred and OVVW continues to dispute conditions

of the CUP. DCD believes OVWW has not performed in accordance with conditions 20 and 22.

Condition 16 Limits Noise on Site

Condition 16

All events shall comply with the noise regulations at KCC Title 10, specifically Chapter 10.28 Noise

DCD has had regular interaction with neighbors and OVWW about noise management. Kitsap County does not have a certified/calibrated decibel reader and is not able to certify Dba readings at receiving or sending sites of properties and is not alleging a separate noise violation for the purposes of revocation. OVWW has assured they are not exceeding 65 dba from their properties. When advised the limit is 55 dba (various internet sites relate 55 dba as the noise a refrigerator makes), OVWW has assured they will manage the noise to 55 Dba. Nonetheless, complaints have been submitted by neighbors with their personal Dba readings (Exhibit C-32). On September 10, 2021, the Kitsap County Sheriff's Office was called about a noise complaint. The responding officer evaluated the noise leaving the sending site (Exhibit C-35).

The State Environmental Policy Act (SEPA) checklist provided with the application (Exhibit C-4) notes on page 6 under Noise analysis that "The site will generate very low levels of traffic noise and movement noise from patrons of site (sic) on weekends." As to measures to reduce or control noise impacts OVWW notes "None are proposed or appear to be warranted by the applicant's proposed project." The SEPA analysis and subsequent Determination of Nonsignificance (Exhibit C-6) relied on this statement during its project analysis. While no separate noise violation is being alleged, DCD notes that the other violations all feed into the noise complaints. Increases in the number of events, number of attendees, etc. increase the noise levels on site beyond what was contemplated in the SEPA analysis and description of the use. Had DCD understood that amplified sound equipment was going to be used (instead of, for example, acoustical instruments) it would have likely required a noise mitigation analysis, or at the very least considered conditions to mitigate noise.

Relevant Noise regulations under KCC Title 10 Peace, Safety and Morals; Chapter 10.28 Noise is shown in Exhibit C-7.

Other Neighborhood Complaints and DCD site visits

DCD has several complaints from neighboring properties, as well as a couple supportive emails (Exhibits C-10, 11, 32, 37, 38, 42-47; and listed chronologically in Exhibit C-41). Many of the complaints are rather specific and detailed. The list below is not all-inclusive, and many of the complaints reference:

1. Number of events exceeding allowed amount.
2. Number of persons exceeding allowed amount.
3. Number of parked cars exceeding allowed amount.
4. Approved parking plan not being followed.
4. Noise ordinance being violated during events.
5. Amplified sounds going past the CUP cut-off of 9 PM.
6. Site plan changes and membrane structures without permits.
7. Events starting outdoors before the month of June.

8. Lack of port-a-potties, using a small bathroom.
9. Trespassing by patrons onto or through others' properties; no-trespassing signs being removed/destroyed.
10. Unauthorized outdoor events.
11. Hosting of RVs overnight.
12. A bar or tavern being established.
13. The "appointment-only" requirement being abandoned.

In an email for the record, dated July 25, 2021 (Exhibit C-33), Scott Diener, DCD DSE Manager advises what he observed on the evening of July 25, 2021. Diener did not enter the property, but of import were cars parked along the driveway at a point where it curves out of view from the roadway.

In an email to David Lynam, BFS Manager (who manages DCD's Code Compliance), dated August 2, 2021 (Exhibit C-34), Scott Diener, DCD DSE Manager advises what he observed on the evening of July 31, 2021. Diener did not enter the property, but of import is that this event exceeded the number of events allowed.

DCD believes that given the numerous noise and other complaints received by various property owners and residents, the violations of the CUP conditions have created a use materially detrimental to the current and future uses of property in the immediate vicinity and show that the expanded use is incompatible with the surrounding rural residential uses. If requested, additional opportunities to cure should not be granted to OVWW.

Policies and Regulations Applicable to the Subject Proposal

KCC 17.550 *Hearing Examiner Conditional Use Permit* discusses the Hearing Examiner's role in reviewing and approving Conditional Use Permits (CUPs). KCC 17.550.030.B *Decision criteria – Conditional use permit* discusses conditions, requirements, standards, etc. that the Hearing Examiner may impose on permit approval.

When conditions of approval are not met, KCC 17.600 *Revocation of Permits or Variances* allows for DCD to request revocation of an approved permit.

KCC 21.04.280 *Revocation of approval* also addresses revocation and discusses revocation when the use for which such approval or permit was granted is not being executed, or the approval or permit granted is being, or recently has been, exercised contrary to the terms or conditions of such approval or permit, or in violation of any statute, resolution, code, law or regulation.

Request

DCD requests revocation of the OVWW CUP as allowed in Kitsap County Code (KCC) 17.600 *Revocation of Permits or Variances* and 21.04.280 *Revocation of Approval*.

Documents Consulted in the Analysis

A complete index of exhibits is submitted separately pursuant to the Hearing Examiner prehearing order.

Review Authority

The Hearing Examiner has review authority for Conditional Use Permit Revocation under KCC 17.600 *Revocation of Permits and Variances* and 21.04.280 *Revocation of Approval*.

Recommendation

Based upon the analysis above and the revocation criteria found in KCC 17.600 and 21.04.280 the Department of Community Development recommends that the CUP 16-01455 be revoked in its entirety.

Report prepared and approved by



David Lynam, Manager, Building and Fire Safety

12-2-2021
Date



Scott Diener, Manager, Development Services and Engineering

12-2-2021
Date

Attachments:
None

Cc:
Applicant/Owner
Complainants