

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s): Randolph and Robin Schemkes
4728 - 113th Ave SE
Snohomish, WA 98290

File No.: PCUP00-15-0011

Request: Conditional Use Permit (CUP)

Parcel No: 273312002

Location: 2371 Crow Valley Road, Orcas Island

Summary of Proposal: An application for a conditional use permit to allow
the sale of wine made from out-of-County fruit on-site

Land Use Designation: Ag Resource 20

Public Hearing: June 18, 2015

Application Policies and Regulations: SJCC 18.80.100(D) CUP Criteria

Decision: Approved subject to conditions

S.J.C. DEPARTMENT OF

JUL 08 2015

COMMUNITY DEVELOPMENT

**BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY**

In the Matter of the Application of

Randolph and Robin Schemkes

for approval of a conditional use permit
to allow sale of wine produced from non-
local grapes on-site at
2371 Crow Valley Road, Orcas Island

) NO. PCUP-15-0011
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)
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) **Orcas Island Winery CUP**

S.J.C. DEPARTMENT OF

JUL 08 2015

COMMUNITY DEVELOPMENT

SUMMARY OF DECISION

The request for conditional use permit to authorize the on-site sale of wine produced at 2371 Crow Valley Road, Orcas Island from out-of-County grapes is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:

Randolph and Robin Schemkes (Applicants) requested a conditional use permit to authorize the on-site sale of wine produced at 2371 Crow Valley Road, Orcas Island from out-of-County grapes.

Hearing Date:

The San Juan County Hearing Examiner held an open record public hearing on the request on June 18, 2015. By the agreement of the Applicant, the deadline for decision issuance was extended five business days to July 9, 2015.

Testimony:

At the open record public hearing, the following individuals presented testimony under oath:

Lee McEnery, Planner, San Juan County Department of Community Development
Randy Schemkes, Applicant
Randolph Schemkes, Applicant
Teri Williams, neighboring property owner

Exhibits:

The following exhibits were admitted in the record:

1. Dept of Community Development Staff Report to the Examiner, dated June 2, 2015
2. Application
3. Narrative
4. Administrative Determination by René Beliveau (5 pages), dated May 20, 2013

5. Certificate of Occupancy
6. Aerial photo from San Juan County GIS
7. Site plan
8. Floor plan
9. Public Works Memorandum re: road capacity concurrency, dated June 16, 2015
10. Email exchange between Randy Schemkes and Shireen Hale, dated December 2013 and January 2014
11. Applicant's background, timeline, and arguments on permitting concerns, submitted by Randy Schemkes, dated April 1, 2015 (5 pages)
12. Narrative (repeat of Exhibit 3)

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Applicants requested a conditional use permit to authorize the on-site sale of wine produced at 2371 Crow Valley Road, Orcas Island from out-of-County grapes.¹ *Exhibits 1, 2, and 3.*
2. The 15.6-acre subject property, which has an Ag Resource 20 land use designation, is situated on the east side of Crow Valley Road north of Sunnyside Lane. It is surrounded by agricultural uses to the north, south, and east, and residential uses in all directions. There are no airports or airfields in the vicinity. *Exhibit 1.*
3. The northern, topographically higher portion of the subject property is cleared. It is developed with two acres of grapes, a 1,900 square foot barn housing the wine business and an accessory dwelling unit, and a driveway. The property slopes downward from these improvements to east-southeast towards Crow Valley. Because the on-site vines are not yet mature, Orcas Island Winery produces a very small amount of local fruit. It currently produces wine made from out-of-County grapes. *Exhibits 1, 6, and 7.*
4. According to Planning Staff, San Juan County GIS maps indicate there is a wetland on the site. The entire County is identified as a critical aquifer recharge area. However, the proposal would involve no physical improvements and does not trigger critical area requirements. *McEnergy Testimony; Exhibit 1; San Juan County Code (SJCC) 18.35.030.*
5. After conducting due diligence, the Applicants purchased the subject property in January 2012 with the intent of operating an on-site vineyard and winery. They prepared for

¹ The subject property is known as Tax Parcel number 273312002. *Exhibit 1.*

planting in spring and in August 2012 began to apply for the necessary land use and building permits. Unbeknownst to them, new County ordinances went into effect in October 2012 that "were not online for about a year." *Randy Schemkes Testimony*. Initially, the business plan included on-site production of wine, a tasting room with wine sales, educational tours/displays, and a small commercial kitchen to serve limited food items. Most or all of these planned elements had been allowed under the "agritourism" and "agricultural activities" provisions of the County Code in effect at the time the Applicants purchased the property. However, the adopted code amendments changed the "agritourism" use and included a new definition of agriculture. *Exhibits 1, 2, 4, and 11; Randy Schemkes Testimony*.

6. The conflict between business plan and code was discovered during processing of the barn renovation building permit. The Applicants received a Certificate of Occupancy authorizing use of the building after inspection for compliance with building codes.² On its face the certificate referenced restrictions, stating that "any winery activity or use should be in accordance with Administrative Determination #273312002." *Exhibit 5*. On May 20, 2013, Chief Building Official René Beliveau had issued the administrative determination addressing how the new County agriculture regulations applied to the Schemkes winery. As to the question of whether the on-site sale of wine created exclusively from out-of-County grapes, or how the small commercial kitchen and serving limited food items, could be approved as an allowed use or whether they are prohibited, the administrative determination concluded as follows:
 1. The proposed uses may be classified under the defined use of "Agricultural processing, retail, and visitor-serving facilities for products" and
 2. The "Agricultural processing, retail, and visitor-serving facilities for products" use may be included under the "Unnamed agricultural and forestry uses" of Table 3.2 under SJCC 18.30.040, and therefore
 3. The Owner shall be permitted to apply for a conditional use permit for the intended uses which may be approved, approved with conditions, or denied by the hearing examiner.

Exhibit 4.

7. The administrative determination included information about how it could be appealed and noted there was a 21-day appeal period. *Exhibit 4*. Nothing in the record indicates that it was timely appealed.
8. Since the issuance of the administrative determination, the Applicants have rescinded their request for approval of the small commercial kitchen and on-site limited food service. *Exhibits 1, 3, and 4; Randy Schemkes Testimony*.

² Although the certificate itself is dated December 4, 2013, it was not delivered to the Applicants by appropriate County personnel until January 8, 2014. *Exhibit 10; Randy Schemkes Testimony*.

9. On December 19, 2014, the Applicants submitted an application for conditional use permit to allow on-site sales of wines produced from out of County grapes. It was determined to be complete on April 15, 2015. *Exhibits 1, 2, and 3.*
10. In their application narrative and on the record at hearing, Applicants noted that sale of wine made entirely from out-of-County grapes is allowed at the Lopez Winery and that unless their instant request is approved, Orcas Island Winery would not be a viable operation. *Exhibit 3; Randy Schemkes Testimony.* At hearing, the Applicants further contended that the proposed on-site sale of wine from out-of-County grapes should be permitted by code without a conditional use permit. *Exhibit 11; Randy Schemkes Testimony.*
11. Planning Staff noted that the instant proposal does not include signage, but that a sign would be allowed consistent with the requirements of SJCC 18.40.370 and .390. Neither does the application reference exterior lighting; however, the use must comply with the standards at SJCC 18.60.170. *Exhibit 1.*
12. The site plan depicts available parking areas near the barn. Regarding parking, Planning Staff indicated Parking that the number of spaces for un-named uses (sale of wine made exclusively from out-of-County grapes) is to be determined by the Administrator. Using the parking rates established for retail uses, which require one space per 300 square feet, the winery requires six parking spaces. Available parking exceeds this standard. *Exhibits 1 and 7.* The proposed use must comply with parking standards established at *SJCC 18.60.120.*
13. The application materials were routed to County review agencies for comment, including: Public Works, Health Department, the Fire Marshal, and the Chief Building Official. The only comments submitted were from the Public Works Department, whose Staff noted that existing traffic volumes on Orcas Road at mileposts 6.93 and 7.00 currently exceed capacity of the roadway, causing level of service (LOS, experienced as driver delay) to fall below the County's standard of LOS D. However, the roadway abutting the site entrance enjoys advantages relative to other road segments, including greater roadway width with three-foot shoulders on either side able to accommodate bicycles and pedestrian traffic, if any. Presently there is little to no queuing delay at the Crow Valley Road intersection adjacent to this road segment. Due to these and other site specific circumstances, the application does not fail traffic concurrency standards, according to Public Works. *Exhibit 9; McEnery Testimony.*
14. On a purely practical note, the only element proposed in the application is to allow sale of wine already produced on-site from out-of-County grapes. Vehicles are already visiting the winery. Planning Staff submitted that it is not likely that the source of grapes would appreciably increase traffic volumes, even if approval were to increase the amount of wine sold on-site. No pedestrian traffic is anticipated to result from approval. *Exhibit 1.*

15. The proposal was determined to be exempt from SEPA pursuant to WAC 197-11-800(1)(b)(iii). *Exhibit 1.*
16. Notice of application and public hearing was mailed to surrounding property owners on April 25, 2015, and was posted on-site and published on April 29, 2015. The County received no public comment on the application prior to the public hearing. *McEnery Testimony; Exhibit 1.*
17. At hearing, one neighboring property owner who works in real estate spoke in favor of the proposal. She stated that the proposal is the kind of activity the community wants to see in Crow Valley, because it draws tourism and promotes the local economy. Incidentally she noted that she has given Orcas Island Winery wines as gifts to clients and they have been well received. *Williams Testimony.*
18. Planning Staff submitted that approval of the request would be consistent with the intent of the Unified Development Code and the Comprehensive Plan as well as specific requirements in SJCC Chapter 18.60. Staff noted that there are no code-based limits on the amount of locally-produced wine that can be made on-site and that similar requests from other wineries would not likely result in any cumulative impacts. Staff recommended approval with conditions. *McEnery Testimony; Exhibit 1.* The Applicants waived objection to the recommended conditions. *Randy Schemkes Testimony; Randolph Schemkes Testimony.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for conditional use permit pursuant to Chapter 36.70.970 of the Revised Code of Washington and Chapters 2.22 and 18.80 of the San Juan County Code.

Criteria for Review

Pursuant to SJCC 18.80.100.D, a conditional use permit shall be granted by the County only if the following criteria are met:

1. The proposed use will not be contrary to the intent or purposes and regulations of this code or the Comprehensive Plan;
2. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located;
3. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval;
4. The cumulative impact of additional requests for like actions (the total of the conditional uses over time or space) will not produce significant adverse effects to the environment that cannot be mitigated by conditions of approval;

5. The proposal will be served by adequate facilities including access, fire protection, water, stormwater control, and sewage disposal facilities;
6. The location, size, and height of buildings, structures, walls and fences, and screening vegetation associated with the proposed use shall not unreasonably interfere with allowable development or use of neighboring properties;
7. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood;
8. The proposal complies with the performance standards set forth in Chapter 18.40 SJCC;
9. The proposal does not include any use or activity that would result in the siting of an incompatible use adjacent to an airport or airfield (RCW 36.70.547); and
10. The proposal conforms to the development standards in Chapter 18.60 SJCC.

Conclusions Based on Findings

1. The May 20, 2013 administrative determination stating that a conditional use permit was required for the on-site sale of wine produced on-site from out-of-County grapes was not timely appealed and cannot now be challenged. All that is before the hearing examiner in the instant proceeding is whether or not criteria for conditional use permit have been demonstrated to be satisfied. *Findings 6, 7, and 9.*
2. Wine is already made on the site and approval would not change the existing land use, but would only bring it into compliance with code requirements. The proposed sale of wine produced on-site with out-of-County grapes would be consistent with the intent of the Unified Development Code and the County's Comprehensive Plan. *Findings 3, 4, 5, 6, 8, and 18.*
3. The proposal would not result in any exterior changes to the existing winery. Approval would not cause the winery to call out of compliance with the purpose of and standards applicable to the Ag Resource 20 land use designation. *Findings 4, 5, 6, 14, and 18.*
4. No critical areas were identified within the active winery footprint on-site. Approval would not result in new impervious surfaces or vegetation removal. Producing wine with fruit from out-of-County would not generate impacts on the human or natural environments. *Findings 3 and 4.*
5. The proposal would not noticeably alter the existing use of the site. Additional similar requests would be limited in number and subject to the same review process. No cumulative significant adverse impacts are likely to result from approval. *Findings 4, 5, 6, and 14.*
6. No physical changes to the site would result from approval. The Public Works Department has confirmed that the winery is fronted by adequate roadways and that approval should not result in impacts to surrounding transportation infrastructure. The

building on-site was renovated pursuant to pertinent building code review. *Findings 4, 13, and 14.*

7. Approval would not result in any changes to the approved buildings or use on-site aside from allowing sale of wine made on-site from out-of-County grapes. *Findings 4, 8, and 18.*
8. Approval would not result in any physical changes to the site, its frontage, or access, and should not increase traffic to the site noticeably. *Finding 4, 13, and 14.*
9. There are no use-specific performance standards for the proposed use. *SJCC 18.40.*
10. There are no airports or airfields in the vicinity. *Finding 2.*
11. With conditions, the proposal would conform to applicable requirements of SJCC Chapter 18.60. *Findings 11, 12, 13, and 18.*

DECISION

Based on the preceding findings and conclusions, the request for conditional use permit to authorize requested a conditional use permit to authorize the on-site sale of wine produced at 2371 Crow Valley Road, Orcas Island from out-of-County grapes is **APPROVED** subject to the following conditions:

1. Signage shall comply with the standards of SJCC 18.40.370 and .390.
2. Approval does not authorize "events" hosted at the winery.
3. Wine tasting is included in the sales component of this proposal. Approval does not authorize food tasting or service.
4. A minimum of six parking spaces shall be provided.
5. The use must comply with the standards at SJCC 18.60.170. Exterior lighting shall be energy-efficient and shielded or recessed so that direct glare and reflections are contained within the boundaries of the parcel. Exterior lighting shall be directed downward and away from adjoining properties and public rights-of-way. No lighting shall blink, flash, or be of unusually high intensity or brightness. Exterior lighting fixtures must be shielded and the light must be directed downward and away from wetlands and wetland buffers, as well as lakes, ponds, the marine shoreline, and habitat of specific animals protected as fish and wildlife habitat conservation areas. All lighting fixtures shall be appropriate in scale, intensity, and height to the use they are serving. Any lighting installed in parking areas shall be of direct cutoff design so that the source is not visible from adjacent property. Decorative lighting shall be limited to incandescent lamps with a maximum of 25 watts per bulb and 500 watts overall.

Decided July 8, 2015.

By:



Sharon A. Rice
San Juan County Hearing Examiner