

**BENTON COUNTY HEARINGS EXAMINER
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION**

**CUP 2018-009
Avalos Event Center**

January 3, 2019

1. FINDINGS OF FACT

1.1 Proposal. Mr. and Ms. Avalos requested a conditional use permit (CUP) to operate an event center on a 23.25 acre parcel

- **Applicants/Property Owners:** Rubin and Ibelia Avalos, 157801 W. Old Inland Empire Hwy., Prosser, WA 99350.
- **Location:** Physical address above. Lot 4 of Short Plat 579 in Section 4, Township 8 North, Range 24 East, W.M., Parcel Number 1-0484-200-000-3000.

1.2 Administrative Record. The Hearings Examiner admitted these exhibits:

Exhibit Number	Description	Date
Hearings Examiner Record Exhibits		
HER 1.1	Application and Supporting Documents	November 6, 2018
Hearings Examiner Memo Exhibits		
HEM 1.1	Staff Memo	December 10, 2018
HEM 1.2	Benton County Fire Marshal, Comment	November 15, 2018
HEM 1.3	Sunnyside Valley Irrigation District, Comment	November 16, 2018
HEM 1.4	Benton County Road Department, Comment	November 19, 2018
HEM 1.5	Benton Franklin Health District, Comment	November 21, 2018
HEM 1.6	Notice of Open Record Hearing	December 3, 2018
HEM 1.7	Public Comment (Mr. R. Dorsett)	December 12, 2018
HEM 1.8	Public Comment (Ms. R. Dorsett)	December 12, 2018
HEM 1.9	Public Comment (Ms. M. Stairer)	December 12, 2018
HEM 1.10	Public Comment (Mr. A. Dorsett)	December 13, 2018
Hearings Examiner Hearing Exhibits		
HEH 1.1	Public Comment (Mr. and Ms. McGahey)	December 17, 2018
HEH 1.2	Applicant Response Comment	December 17, 2018
HEH 1.3	Applicant E-Mail Response Comment	December 17, 2018
HEH 1.4	Public Comment (Ms. Pearson, Pearson Sheep Company)	December 17, 2018
HEH 1.5	Public Comment (Mr. Pearson)	December 17, 2018

Notes: HER -- Hearings Examiner Record Exhibits
 HEM -- Hearings Examiner Memo Exhibits
 HEH -- Hearings Examiner Hearing Exhibits

1.3 Site and Surrounding Land Uses. The site's Rural Lands 5 zoning is designed to protect the County's rural character.¹ The property is just off a highway with a 50 mile per hour speed limit, and is otherwise surrounded by single-family residences and pastures. The property has a residence and garage/shop and, except for grass and shrubs, is largely bare of vegetation. The RL-5 zone requires the project to be authorized via conditional use permit.² Procedures and criteria for reviewing a CUP, and requiring Hearings Examiner approval of same, are at BCC 11.50.040 and .050.

1.4 Project Description. The event center would host weddings, reunions, anniversaries, birthdays, and other events. Events will be held in a "barn-styled" event center. Details have not been finalized, but it will not exceed 5,000 square feet in area and 21 feet in height, and will be surrounded with landscaping. There would be a storage area for tables, chairs, and decorations, and a covered plaza area for guests to sit and enjoy the outdoor scenery. A kitchen area will be included to serve food. Bathrooms will be housed within the building. One sign was requested to advertise the facility.

Large events will be held only on weekends and all music will be indoors. Smaller events, without amplified music, will be allowed during the week. If alcohol is served, an alcohol permit will be required. If the event hosts 100 people or more, security will be required. All parking will be on the property, with no overflow allowed onto the highway. Maximum allowed parking is 39 spaces.

The event is set back from property lines on all four sides, with the parking area roughly 500 feet from the entrance, and the event center behind the parking area. The event center is set back over 100 feet from the west property line, more from the back (south line), and considerably more on the east. Given the acreage, the event center could be moved more to the site's center and east to further mitigate impacts, consistent with Applicant testimony.

1.5 Public Notice. The notice for the Benton County Hearings Examiner Open Record Hearing was published on December 3, 2018 in the Tri-City Herald and mailed to property owners of record within 300 feet of the outer boundaries of the parcel.³ The Open Record Hearing was scheduled for December 17, 2018. No concerns on notice were raised.

1.6 Hearing. The Hearings Examiner considered the Applicants' request at an open record public hearing on December 17, 2018. The Planning Department summarized the proposal, which the Applicant, through Ms. Avalos, further described in testimony. Public testimony followed, as described below. Following a short break, the Applicant addressed questions arising from public comment and the Examiner. Following the close of testimony, the

¹ Ordinance 611, § 39; BCC 11.11.010.

² Ordinance 611, § 44, BCC 11.11.060(n) ("[r]eception facility with a capacity not to exceed two hundred (200) attendees."). The County amended its zoning code in September, 2018. The substantive criteria the Examiner uses to review the CUP did not change, but minor re-codifications occurred. At the time of the hearing, the revisions had not been codified, but copies of the updated zoning chapter were available at the hearing. At the time the decision was written, codification had occurred.

³ HEM 1.6; HEM 1.1, p. 1.

Examiner kept the written record open for another day. Nothing further was received. The Examiner conducted a site visit the morning of the hearing, driving by but not entering the site.

1.7 Testimony. Testimony was provided from several members of the public. Most own and/or live on property proximate to the proposal. Testimony raised issues similar to concerns also identified in written comment,⁴ and is summarized below.⁵

Ms. Stairet serves as Asst. City Attorney for the City of Kennewick and her husband serves as a trooper for the Washington State Patrol. They recently approached family members about purchasing property about 600 feet from the site. They are hoping to move back to the country for its rural atmosphere. Under the RL-5 zoning, this is an area designed to preserve the County's rural character. Ms. Stairet does not believe the proposed use fits in this setting and would change the community's character. The area consists of mostly larger/plus five acre lots. There are no other event centers in the area; there is nothing else drawing large crowds in this manner. The closest type of use would be the Grange, which operated as an event center. Issues of concern included noise (talking from large groups of people, loud music, traffic), along with alcohol issues. As a prosecutor she has reviewed numerous police reports and alcohol is often a significant factor in altercations and reckless driving incidents. Lights from vehicles and vendors and aesthetic impacts are also a concern, along with litter and clean up. Ms. Stairet does not believe the use is compatible. On material detriment, she raised concerns about disturbances associated with alcohol, trespassers, damage to surrounding properties and theft. Ms. Stairet raised questions on whether water/sewer would be adequate. She is concerned about traffic impacts associated with 200 cars coming to one location, including off-site parking and pedestrian safety. She is most concerned about discouragement of development of other permitted uses. She is buying a neighboring property and is waiting until January for tax purposes. This is giving her pause. She grew up on this land and loved growing up on the farm, and is concerned that with an event center next door she won't have the same experience now as an adult and is concerned land values could be adversely impacted. She requested CUP denial.

Mr. Pearson owns property on the site's south and east edges, except for a small northeast corner area. He owns Pearson Sheep Company with his wife. When they first moved here, his family lived in an older travel trailer with two kids, on an unimproved property. Now, 24 years later, they have a tidy, maintained property and a commercial flock of sheep. They put their house a quarter of a mile off the main road to have peace, quiet, and privacy. The event center would be no more than 450 feet from his back porch. He is concerned it will take away what they have worked so hard to maintain. The Grange was sited about 1/4 mile east and it had serious impacts from loud noise throughout the night; loud enough to make pictures inside vibrate. There were fights and indiscriminate gunfire in the parking lot to the south, which resulted in a bullet hole in the shop. If the sound were never to exceed 65 dB, that would be fine, but he is concerned that will not be the case. Also, he does not believe the soil can accommodate septic for this many people, and if a mound system were installed, that would be too close to his property (300 feet from his well) and present ground water contamination concerns for his drinking water. He also raised concerns about trash and facility clean up.

⁴ See HEM 1.7-1.10 and HEH 1.1, 1.4, and 1.5.

⁵ This is not a transcript, only a summary. A recording is on file with the Planning Department.

Ms. Pearson emphasized her husband and she live in a quiet neighborhood consisting of small farms and single-family homes. They operate a livestock operation with 250-480 head of sheep on 83 acres and she is concerned the noise will stress the livestock. A rental house is on the property and she manages a second rental house just to the south. People move here seeking quiet, and she is concerned about disruptive and nuisance noise possibly every weekend and some holidays.

Ms. J. Dorsett is a community advocate. She works with Target Zero, for the Washington Public Safety Commission. She works with eight law enforcement agencies in Benton and Franklin counties. Prosser is short five officers, Benton County is short eight officers, and Washington State Patrol is short two officers. Violent and non-violent crimes rise with alcohol consumption. An officer mentioned to her that extra patrols can be done but officers are often not notified of events, and were concerned about additional trees and shrubbery as they could not see onto the property. She raised concerns about drinking and driving and officers not adequately monitoring parties. She raised concerns about increased drug use, and impacts on youth in the community.

Mr. Donaldson and his wife own and operate a 15-acre pasturage. He is a retired school teacher (taught for 40 years) and former police reserve officer (served for eight years). He has answered calls along the highway. It is the longest straight road in the County. It is possible to achieve 100 m.p.h. on this road. He knows as he rode with another officer while that occurred. He is concerned about DUI issues on the road. The event center would bring more traffic and more noise. The area already deals with loud traffic noise and music. He applauds the Applicants for trying to make a local business work, but does not believe this is the right location. He is concerned the ground will not perc. To help with noise, shrubs would need to be fairly large and grow quickly. He is concerned with people arriving already inebriated. Mr. Donaldson asked that the proposal be denied.

Mr. R. Dorsett identified the location of properties he owns, including where he lives, the site his daughter is hoping to purchase, and where his two sons are interested in building. He is opposed to locating the event center in his neighborhood. Significant issues were associated with the Grange. Impacts included noise, traffic (including an accident where their vehicle had to drive into a ditch to avoid being hit head-on by a party attendee), a bullet being shot through his house and daughter's bedroom as they slept, and trash issues. This use would render this site unlivable and the CUP should be denied. The business will not "enhance and preserve Benton County's rural character," consistent with the RL-5 zoning. Is not compatible with surrounding uses and will materially endanger the health, safety, and welfare of the surrounding community. The use will cause vehicular traffic which will endanger the well-being of people traveling in the area during these events, and the added need for policing will drain sheriff resources. The use will discourage development of allowed uses on neighboring properties. The use should be in a commercial setting. The CUP will hurt his family's and the neighbors' peace and solitude.

Ms. R. Dorsett was born and raised in Prosser. She returned to Prosser with her husband after a short absence to raise their family (7 children) for the last 33 years, on 29 acres adjacent to the site. She said she was never contacted by the Applicants regarding the project and they did not discuss the project with her. She was at first happy to see a hard working couple with

children moving to the property and cleaning it up. That changed after they learned of the proposal. She is concerned about noise, safety, and privacy. She knows the center will change the setting, because she saw this with the Grange. When it was operating there was only chaos on the road. This included being run off the road one night with their young children. Garbage was unsightly, noise could be heard, security was scared to be there, and her family avoided the place when there was a function. The Grange was closed due to the adverse behavior there. There were similar problems at the Sacred Heart Church where she served on the Board. The church had a contract with rules but they could not be enforced. The church had to shut down church hall rental to everyone, including parishioners. Even when alcohol was prohibited, it would be smuggled in. There was security, but they still had noise complaints. Also, there were noise issues with two other event centers. The local rural lifestyle should be preserved and the event center should be in a commercial zone, as it would ruin the neighborhood.

Mr. A. Dorsett spoke to highlight certain points in a letter he submitted the previous week. Under 11.16A.050,⁶ the maximum number of attendees is 200. He does not believe this would be followed if granted. He and his wife were married two years ago, and had a small wedding with family and close friends, but had over 200 people. He does not believe it will be possible to comply with the limit. The use would not be compatible with other uses, which is developed with agricultural and homestead uses, and would degrade the quality of the rural lifestyle. He believes the event center will have a negative impact on the health, safety and welfare of the surrounding community, particularly through drunk driving and risks to ground water. He worked for the state as an environmental specialist for a year and worked primarily on nitrogen loading, and believes the septic system presents that issue for wells. He is also concerned about alcohol at the facility. Even with bartenders, he is concerned people will sneak alcohol in and go to their cars to drink. This will adversely affect pedestrian use. He and his family use the roads area (he walks and runs in the area) and the traffic would decrease the ability to do that. The use will also affect equestrian uses. It will discourage him from living proximate to the facility, as he is considering building a home on his parents' land.

Ms. McGahey lives over a mile from a similar facility on a farm in Yakima County, and even with that distance, she can hear yelling and laughter. She is concerned about the increased traffic and its impacts. She is also concerned about unknown people coming into the neighborhood.

Ms. Tovar grew up in Prosser. Her parents brought the family here. She moved on with education to Seattle and lived in the U-District. Due to noise, it was difficult to raise a child there, and she and her husband returned to Prosser. She wanted the same quietness and for kids to be able to play outside. There are conflicts with the present uses. She has lived in the area for 15 years, and neighbors have constant parties and camp fires. Noise is hard to control in the country, as sounds can be heard from far away. She has also had issues with neighbor dogs attacking her children, horses getting out, and cows getting out. She has seen a lot of accidents, not only from alcohol, but during harvest season, when workers are tired. As a student counselor, she sees students have access to alcohol often from parents, and situations where, through adults, kids are exposed to drugs and alcohol. Some things we can control; some things we cannot. We have to be careful saying it is only an event that causes something. The entire

⁶ Now codified at BCC 11.11.060(n).

community must be responsible. We must know how to support each other. The Applicants are trying to do something better for themselves and are considering all the impacts for everyone else. We must consider what Ms. Avalos's reasons are and be able to support her, and she is considering what the impacts are for her neighbors. She is doing a lot of research trying to figure this out, and decide how she can help her neighbors. So what can we do to help each other out? What can we do to help her make sure all her t's are crossed and i's dotted to make sure she succeeds and we can live in quiet? My neighbors, especially in the summer, live maybe 600 feet or more from me. They are musicians so are constantly playing so she hears them a lot, and at late hours. Another neighbor also has music on the weekends. Ms. Tovar emphasized that she cannot just tell them to turn it off, stating I think we need a compromise.

1.8 Applicant Testimony. The Applicant, through Ms. Avalos, addressed public comment and questions from the Examiner. She explained how she was approaching landscaping, noise management, and alcohol management, and addressed questions on setbacks, adding that the event center could be moved further from the site's west property line if that would help address neighbor concerns.

Different concerns were brought. The only solution is to just prohibit alcohol entirely. She cannot control everything, but she can control what happens at the event center. Businesses not well-organized and not well-managed should not determine what happens with her. Ms. Avalos has visited event centers. There is an event center called Wine Country Gardens about 2.5 miles away which has been in business for a couple years. Potential issues there that she noticed is that it is on five acres (so is on a smaller site) and is within a pavilion, so is all open. Her event center will be within an enclosed building. There is also Shadow Ranch, which has been in business for over 25 years, and they have had success. If a business is well-organized, managed, and taken care of, and these issues are considered, it can succeed. That is her goal.

The Examiner asked about the Grange, and Ms. Avalos noted that it is right next to the highway, with no proper entrance or exit. It is a small location and is not landscaped. Ms. Avalos grew up nearby and knows personally that it was not well-managed and was improperly cared for. She understands it is still rented out occasionally, and they occasionally try to sell, but anyone who has done their research would not use that site as an event center.

Ms. Avalos discussed the alcohol server training she completed, and measures to take to ensure those drinking are of age. She is not willing to take liability from not properly managing alcohol consumption. With proper security it can be confirmed that people will not drink in their cars, and as the owner she can ask people to leave the event if necessary. She will put this into her protocol as she wants no issues. She tells her customers they are spending thousands of dollars, why would you invite anyone who will be a concern? This is a special day, and you want it to go well.

Under state law, pedestrians have to take responsibility for their safety. The site is on a highway which is not safe for pedestrian activity. There is no sidewalk, and the speed limit is 50 m.p.h. Regarding alcohol, she will properly manage the facility and can control what goes on inside the event center, but also expects people to make responsible decisions. The site is 23 acres, which is a lot; she grew up on ten. She expressed openness to moving the event center to

the best location on the site, if it needs to be adjusted to help with compatibility. She is looking into what she can do regarding construction materials and insulation to keep the noise indoors. This is an issue for her as well as her home is right there, and she is raising her family at this site. She is considering every factor for the safety of her children.

As for the Benton County Health Department and Fire Marshal, Ms. Avalos has consulted with those officials. The only reason she has not submitted permits is they cost money. However, she confirmed she knows a traffic analysis is required and the event center must comply with health requirements.

The Examiner asked about the setbacks. Ms. Avalos confirmed the event center would be set back on the front over 500 feet, and on the west over 100 feet. This site was selected due to its size; a nine-acre site was a possibility, but she felt at least twenty were needed for this use.

As a teacher, concerns involving impacts to teenagers are ones she takes to heart. This is something she will discuss with security to ensure alcohol is not smuggled in. She will pay attention to attendee numbers when events are scheduled and she is working with clients. Trash will be cleaned up. If the renter does not complete clean-up work, that is what the deposit is for. Regardless, as she owns the site and her family lives there, the property must be maintained.

1.9 SEPA. SEPA review was not required.⁷ If the project were later proposed for modification, so SEPA exemption thresholds were exceeded, SEPA review and a CUP amendment would be required.

1.10 Agency Comment.

1.10.1 Benton County Fire Marshal.

1. Depending on the Building Department's occupancy classification the building may be required to have a fire sprinkler system.

2. Commercial buildings over 2,500 sq.ft are required to provide onsite firefighting water. Though the final construction documents have not been submitted, a sample fire flow worksheet has been completed for 5,000 sq.ft, wood frame building, and is on page 2. Based on the preceding construction information the sample fire flow worksheet determined a firefighting water supply of 31,500 gallons. This value may be reduced if the type of construction changes to a less combustible construction and if a sprinkler system is installed.

3. The location of the firefighting water supply will be determined by Fire Chief Seth Johnson.⁸

1.10.2 Benton County Public Works. Public Works requested a traffic impact study to confirm parking adequacy, confirm no traffic may back up onto the public roadway, and

⁷ HEM 1.1 (Staff Report), p. 1. *See also* BCC 6.35.050 and .055.

⁸ HEM 1.2.

to ensure right turn/left turn adequacy.⁹ These comments have been incorporated into Condition 4 as project requirements.

1.10.3 Benton Franklin Health District Comments.

1. A septic system application must be submitted to this office. The commercial building must be served by an on-site sewage disposal system that has been permitted, inspected, and approved by this office. As part of this process, the applicant will be required to prove that sufficient usable land area can be qualified for the existing residence and the proposed commercial building. This is attempted through the digging of test holes and subsequent evaluation of soil depth, etc. After reviewing test hole data gathered prior to the installation of the septic system that serves the home, the information indicates that this property has a very shallow Basalt shelf and Ground Water table. **Achieving the Usable Land Area required for this proposal may not be possible.**

2. The existing well located on this property will need to go through the process of approval to become a Public Water Supply, prior to the well being allowed to service the commercial building. The applicants will need to submit the appropriate application to this office to begin this process.

3. A Food Permit will be required for this proposal. The applicants will need to go through the process of applying for a food permit and the subsequent review process. Please contact Justin Gerber at 509-460-4330 for additional information.¹⁰

1.11 Hours of Operation and Noise. The Applicants requested 9:00 A.M. until 10:00 P.M. Monday-Sunday. Large events will be held only on weekends, with smaller non-amplified events during the week. Facility clean up will not occur after 10 P.M., "which may affect the neighboring properties and violate Benton County Codes."¹¹

Non-amplified human voices are exempt 6:00 A.M. - 10:00 P.M. from the Benton County Noise Ordinance, but not outside that time period. The Applicants testified that they will manage the facility consistent with local requirements, so that all amplified sound occurs inside the building, which will be constructed to dampen sound, with the facility designed and managed to minimize noise impacts on neighbors. This is consistent with the County's noise ordinance which prohibits public nuisance noise.

"Public nuisance noise" means the making, creation or maintenance of excessive, unnecessary or unusually loud noises which are unusual in their time, place, and use, affect and are a detriment to the public health, comfort, convenience, safety, welfare and prosperity of the people of the county. Public nuisance noise shall

⁹ HEM 1.4.

¹⁰ HEM 1.5, emphasis added.

¹¹ HEM 1.1 (Staff Report), p. 6.

include continuous or repeated barking from a dog which would otherwise fulfill the definition set forth above.¹²

Generating public nuisance noise which "is plainly audible within any dwelling unit which is not the source of the sound or is generated within two hundred ... feet of any dwelling; and, ... annoys, disturbs, injures or endangers the health, comfort, repose, peace or safety of others," is prohibited.¹³

With operating hours ending at 10 P.M., amplified music contained indoors, parking limited to 39 vehicles (which limits vehicle noise and indirectly the number of attendees), if the facility is responsibly managed with sensitivity to the needs of surrounding neighbors, noise impacts can be mitigated.¹⁴ Conditions 12 and 16 are necessary to address noise concerns.

1.12 Odor. This use should generate no significant odors. Health and sanitation requirements apply to the use and no evidence was identified suggesting this would be an issue.

1.13 Aesthetics. Landscaping has been planned and outlined to improve the site's appearance and screen the use. The use will be set back from all property lines. While final design plans have not been made, a barn styled design consistent with the area's rural character has been proposed. Parked cars can have an aesthetic impact, but will be limited to 39 spaces, and offset from property lines. The event center does not exceed 5,000 square feet and will not be over 21 feet high, so is limited in size, which addresses view impact concerns.

1.14 Water and Septic Systems. The septic and drain field system must be improved to address health requirements, and an approved water supply provided. Concerns over whether the site can perc and sewage impacts to well water were raised. There is a legitimate concern that the site cannot support a septic system for the use as proposed. If that is the case, and the project cannot meet health requirements, the project as proposed would be effectively denied, as the CUP requires such compliance, as addressed in detail through Conditions 8-10. If these requirements cannot be met, the proposal could not move forward.

1.15 Transportation Impacts. The use is located just off a highway, and there will be additional trips to the site, particularly during larger events. The number of trips is limited by both the number of parking spaces (39) and the maximum number of attendees (200). 200 cars could not all occupy the site as only 39 may park. Concerns on highway capacity were not raised, but safety concerns were. Condition 4 prohibits parking along the Highway and ensures that site access follows state and local safety and traffic management practices and requirements.

As for pedestrian and equestrian activity, there will be an increase in vehicle travel for events, but given the parking and attendee limits, these numbers are constrained, and vehicles must adhere to all traffic laws. Also, the traffic analysis is required to assess turn lane safety and whether additional measures are necessary to address same. The larger issue in the area for such

¹² BCC 6A.15.030.

¹³ BCC 6A.15.040.

¹⁴ As parking is limited to 39 vehicles, without carpooling or other means of transportation, this requirement alone will limit the number of people who may attend each event.

activities is not this use, as farm, winery, and church uses also generate regular traffic impacts, but the lack of sidewalks and vehicle speed, which make the highway less than ideal for walking.

Regarding alcohol use, if alcohol is served, the Applicants stated clients will obtain an alcohol permit and provide a bartender, and for events with over 100 guests, security. Ms. Avalos completed the Washington Alcohol Seller/Server Training on December 16, 2018, and addressed her familiarity with basic protocols for managing alcohol consumption. Proper management, the Applicants living at the site, and operating hours ending at 10 P.M., will help responsibly manage alcohol consumption and address safety concerns.¹⁵ If required mitigation measures related to alcohol consumption are not complied with, enforcement proceedings may be initiated, which could result in CUP revocation.

1.16 Health, Safety and Welfare. The event center use would not materially endanger the health, safety, and welfare of the surrounding community to an extent greater than that associated with any other permitted uses in the RL-5 zoning district. Such permitted uses include single family dwellings, duplexes, agricultural uses, nurseries, wineries/breweries (less than 3,000 square feet), and churches (less than 3,500 square feet). The potential impacts associated with the proposal, identified in public comment as a concern to neighboring residents, include transportation, noise, health, aesthetic, and security issues, as well as property values and future development. As addressed in these findings, these are issues which, if sufficiently mitigated and carefully managed, can be addressed.

1.17 Permitted Uses. Due to its orientation, scope, and location on the 23.25 acre property, the proposed use in the application materials and as further described would not hinder or discourage the development of permitted uses on neighboring properties due to use location, size, or height. The use is limited through parking number and attendee number, by size and height, and hours of operation; conditions are required to address the concerns raised in public comment; local requirements are imposed on the use; and, the site's 23.25 acre size far exceeds the five acre minimum. As mitigated, the use will not discourage permitted uses on neighboring properties.

1.18 Conditions. The Planning Department recommended 19 conditions in the Staff Report. Comments received did not object to the wording of the conditions and the Examiner finds these conditions are necessary to address project impacts, so has imposed them with two substantive revisions and a few minor, non-substantive revisions for reading ease.¹⁶ As the Applicants proposed operating hours until 10 P.M., a condition important for addressing noise concerns, the term "recommended" which modified the phrase "operating hours" was removed from Condition 16. On Condition 12, not every sound after 10 P.M. would be a public nuisance, so this wording was clarified.

¹⁵ In future, other policy solutions may become available, such as automobiles being routinely equipped with alcohol concentration level measurement devices.

¹⁶ A sentence was repeated throughout on condition applicability for the entirety of use duration; this need only be stated once. A condition was added at the end of the Decision to accomplish that.

Given neighbor concerns and local experiences with the Grange, the Examiner added two conditions. One requires submission of the final site plan to the Planning Department, and encourages prior consultation with adjacent property owners on same.

The second requires submission of a neighborhood compatibility plan, to ensure attendees comply with basic measures necessary to a successfully run operation. The Applicant summarized a number of these measures during hearing testimony. If basic measures regarding respect for use compatibility and avoidance of material detriment are not adhered to by attendees, this will be grounds for CUP suspension, revocation, and/or other modifications to scale back the use. The Examiner also added a sentence to the last condition so it is understood that violating any condition can result in initiation of proceedings to suspend operations and/or revoke the CUP.

2. CONCLUSIONS OF LAW

2.1 A CUP "shall be granted only" if the Hearings Examiner "can make findings of fact based on the evidence presented sufficient to allow" the Examiner to conclude that, as conditioned, the proposed use:

- (1) Is compatible with other uses in the surrounding area or is no more incompatible than are any other outright permitted uses in the applicable zoning district;
- (2) Will not materially endanger the health, safety, and welfare of the surrounding community to an extent greater than that associated with any other permitted uses in the applicable zoning district;
- (3) Would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with any other permitted uses in the applicable zoning district;
- (4) Will be supported by adequate service facilities and would not adversely affect public services to the surrounding area; and,
- (5) Would not hinder or discourage the development of permitted uses on neighboring properties in the applicable zoning district as a result of the location, size or height of the buildings, structures, walls, or required fences or screening vegetation to a greater extent than other permitted uses in the applicable zoning district.¹⁷

"It is the applicant's burden to present sufficient evidence to allow the above conclusions to be made."¹⁸

¹⁷ BCC 11.50.040(d).

¹⁸ *Id.*

2.2 With mitigation, the Examiner concludes the proposed use follows these criteria. As long as mitigation measures are followed, the CUP proposal does not create incompatibilities with other uses in the surrounding area. Outright permitted uses would not be as incompatible with existing uses in the surrounding area as the proposed use. With setbacks, design and construction consistent with application materials, proper management, compliance with conditions, and setbacks from all property lines on the 23.25 acre property, the proposed use is consistent with the surrounding rural nature of the area, which includes residential and agricultural uses. As acknowledged in testimony, and consistent with the Comprehensive Plan,¹⁹ the rural area is designed not only for single family residential development, but also for economically productive rural use. The site originally housed a dairy which had fallen into disrepair. What is being proposed is a comparatively small event center (5,000 square foot area; 21 feet tall; 39 parking spaces). To achieve Comprehensive Plan objectives, such commercial uses are needed (if responsibly managed and adequately mitigated) to maintain the rural economic environment. Otherwise, the area defaults into a place for residences on large lots, with owner income based on urban employment, and ceases to serve as an engine of entrepreneurial activity and incubator for rural economic development.

2.3 With mitigation and proper management, the requested CUP would not materially endanger the health, safety, and welfare of the surrounding community to an extent greater than that associated with any other permitted uses in the applicable zoning district. Public agency comment addressed how the existing regulatory structure would require mitigation to address health concerns. The Applicants detailed how alcohol consumption would be addressed, and limited operating hours to help attenuate these concerns. Numerous conditions are imposed to ensure invitee conduct avoids material detriment to the community's health, safety, and welfare. If material detriment cannot be avoided, event center operations are subject to termination and/or suspension through enforcement proceedings.

2.4 Granting the CUP would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with any other permitted uses. No off-site parking is allowed, and parking on-site is limited to 39 spaces. Besides a requirement to prepare a traffic analysis by a qualified professional, several conditions are imposed to ensure compliance.

2.5 The CUP would be supported by adequate service facilities and would not adversely affect public services to the surrounding area. Compliance with all Benton Franklin Health District requirements is a required condition to ensure health code requirements are adequately addressed. There are legitimate concerns about the soil's ability to support the use and whether an adequate septic system can be designed. However, the Health District has been clear that if requirements are not met, the scale of the use proposed could not be authorized. The project has been conditioned to protect public health and safety and ensure septic requirements are met. Similarly, the Applicants must comply with all water supply, Building Department and Fire Code requirements.

2.6 Granting the CUP would not hinder or discourage the development of permitted uses on neighboring properties in the applicable zoning district to a extent greater than other

¹⁹ See e.g., §§ 2.6 (Economic Development) and 3.3.2 (Rural Lands).

permitted uses in the zoning district. The site is over 23 acres, the Applicants have researched the measures necessary to ensure a successful operation, and strict conditions are imposed to address issues of concern. The Examiner agrees with testimony that use compatibility is a community effort and neighbors must work together in all situations, including existing uses, to resolve issues of contention.

2.7 The Applicants have addressed the CUP criteria. In summary, as conditioned, the use is compatible with the principal uses and purpose of the Rural Lands Five Acre zoning district and surrounding land uses. Events will be held within an enclosed structure and the site is comparatively large. The use must comply with code requirements and mitigation has been imposed to address concerns over compatibility with existing and future uses in the area.

DECISION

The Hearings Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested CUP for an event center, provided the below conditions are met:

1. The Applicants shall not conduct any of the activities within the scope of CUP 2018-009 until the Applicants are in compliance with all the conditions set forth herein. The Applicants shall notify the Benton County Planning Department in writing when the conditions set forth herein have been fulfilled. The Planning Department shall not issue the CUP until those conditions have been met. The CUP shall not become effective until issued by the Planning Department.

2. If the conditions of approval have not been met and the Planning Department does not issue the CUP within one (1) year from the time the Hearings Examiner conditionally approved the CUP, the Hearings Examiner may declare its approval null and void at a regular Hearings Examiner meeting. Prior to doing so, the Applicants shall be notified in writing at the Applicants' last known address at least twelve (12) days in advance of the upcoming Hearings Examiner meeting.

3. There must be a residence on site and at least one (1) of the proprietors of the business must be the owner or lessee of the property where the business and the residence are located and must reside in said residence.

4. The Applicants shall obtain a traffic impact study to determine the appropriate amount of off street parking (based on size and use) as well as any impacts to Old Inland Empire Highway.

a. The report shall recommend improvements to the property and/or County road system to mitigate impacts.

b. Improvements to be considered shall include but not be limited to: multiple access points, wider driveways and/or turning radii, right turn and/or left turn pockets on Old Inland Empire Highway, shoulder widening, lane widening, etc.

The study shall use the following for guidance:

- No on street parking for the event center will be permitted on Old Inland Empire Highway.
- Traffic entering the event center shall not be permitted to back up onto the public roadway.
- Appropriate vision triangles for any entrance or exit from the site shall be continually maintained by the Applicants.

The study shall be prepared by a qualified traffic engineer licensed to practice engineering in the State of Washington. The report shall be delivered to the Benton County Road Department for review, at which point specific development requirements will be issued based on the results of the study.

All driveways for the site (existing or proposed) shall be constructed and/or upgraded to meet current Benton County Driveway Standards. The Applicants shall separately apply for a road approach permit and complete the necessary improvements in accordance with the Benton County Road Approach Policy. All approaches to this property shall be paved within the County right of way.

5. No more than four (4) non-resident persons, whether they work on site or not, may be employed by or be partners in the business.

6. If more than one (1) business will be conducted within an approved detached accessory building, then a separate application must be submitted for each business activity.

7. The reception facility shall comply with Benton County Ordinance 611, Section 44(n): Reception facility with a capacity not to exceed two hundred (200) attendees.

8. As per the Benton Franklin Health District:

a) A septic system application must be submitted to this office. The commercial building must be served by an on-site sewage disposal system that has been permitted, inspected, and approved by this office. As part of this process, the Applicants will be required to prove that sufficient usable land area can be qualified for the existing residence and the proposed commercial building. This is attempted through the digging of test holes and subsequent evaluation of soil depth, etc. After reviewing test hole data gathered prior to the installation of the septic system that serves the home, the information indicates that this property has a very shallow basalt shelf and Ground Water Table. Achieving the Usable Land Area required for this proposal may not be possible.

b) The existing well located on the property will need to go through the process of approval to become a Public Water Supply, prior to the well being allowed to service the commercial building. The Applicants will need to submit the appropriate application to this office to begin the process.

c) A Food Permit will be required for this proposal. The Applicants will need to go through the process of applying for a food permit and the subsequent review process. For this please contact Justin Gerber at (509) 460-4330 for additional information.

9. The Applicants shall provide written verification to the Benton County Planning Department that all requirements of the Washington State Department of Ecology for a Group B Public Water Supply System have been completed and approved.

10. The drain field and replacement drain field areas must remain unencumbered and not used for parking or storing of any vehicles or equipment.

11. The Applicants shall provide written verification to the Benton County Planning Department that all building permits required of the Benton County Building Department have been obtained and any additional buildings must be permitted to meet current building code standards.

12. The Applicants are subject to Benton County Code Section 6A.15.050(p): sounds created prior to 6:00 a.m. or after 10:00 p.m. may be considered a public noise nuisance. Amplified music must be contained within an enclosed building.

13. The Applicants are to provide a parking plan showing where parking will take place. Parking is limited to 39 (thirty-nine) cars. No parking will be allowed along the public road right-of-way. No parking shall be allowed on adjoining properties not under the ownership of the parent parcel.

14. The Applicants need to maintain an emergency response and designated fire lane that must be kept open and unobstructed at all times during any event at the facility. This plan is to be coordinated and approved by the Benton County Fire Marshal and Benton County Fire District #1.

15. The approval of this CUP does not in any way give the Applicants approval for on-site distribution or consumption of alcoholic beverages. The rules and regulations of the Washington State Liquor and Cannabis Board must be followed. Appropriate permits or licenses must be obtained for any alcohol consumption on the premises.

16. The Applicants requested the hours of operation 9:00 a.m. until 10:00 p.m. It is a violation of the Benton County Nuisance Ordinance to have any loud activity after 10:00 p.m. and days of operation would be Monday through Sunday, with operation times of 9:00 a.m. to 10:00 p.m. Any cleaning activity or outside cleanup up of the facilities shall not take place after 10:00 p.m. which may affect the neighboring properties and violate BCC.

Benton County Code Section 6A.15.050(p) provides that sounds created by normal un-amplified human voices from 6:00 a.m. to 10:00 p.m. are exempt from the provisions of Benton County Code 6A.15 and are not considered public nuisance noises.

17. Owners/operators shall be responsible to obtain and comply with any applicable federal, state, and local laws, and must obtain all necessary permits and approvals prior to operation.

18. Any waste created as a result of this CUP must be disposed of off-site in a timely manner and in compliance with all local, state and/or federal regulations.

19. The Applicants must adhere to and make the necessary required improvements to Old Inland Empire Highway and to any constructed approach onto said road related to the traffic study performed and approved by the Benton County Road Department.

20. The Applicants shall submit the final site design plan to the Planning Department for approval. That site plan shall mark setbacks and event center location, along with identifying the type and location of landscaping to address aesthetic and noise concerns. Construction material/insulation measures used to contain sound inside the event center are to be noted. Setbacks shall be consistent with the application materials, although event center location may be adjusted to better address compatibility concerns. The Applicants should consult with adjacent property owners on the final design and property line setbacks before submittal.

21. A neighborhood compatibility plan shall be submitted to the Planning Department for approval. The plan shall include the event center's standard contract requirements to ensure parked cars do not exceed the allowed 39 spaces, attendees do not exceed 200 in number, the site is cleaned up after events, noise control conditions are complied with and the function is managed to further control same, and also include standard contract requirements addressing alcohol management (including prohibitions on guests bringing alcohol to the site or arriving inebriated; and, requirements to ensure consumption is only by those of age). Compliance failure constitutes grounds to initiate proceedings to suspend operations, scale back the use, and/or revoke the CUP.

22. A failure to comply with any of the permit conditions may result in suspension of operations, reduction in the scale of the use, and/or CUP revocation by the Hearings Examiner or other authority. The Applicants shall continue to meet all conditions while CUP 2018-009 is in effect.

THIS DECISION is entered this 3rd day of January, 2019.



Benton County Hearings Examiner
Susan Elizabeth Drummond