

Benton County Planning Department

Planning Annex, P.O. Box 910, 1002 Dudley Avenue, Prosser WA 99350, Phone: (509) 786-5612 or (509) 736-3086, Fax (509) 786-5629

Memo Date: January 3, 2017
To: Benton County Hearings Examiner
Hearing Date: January 9, 2017
From: Benton County Planning Department
Jerrod Macpherson, Assistant Planning Manager
Re: Conditional Use Permit
CUP 2015-007 Extension Request
Applicants: Robert Smasne/ROS Wine Company



The Benton County Hearings Examiner on December 21, 2015 conducted a public hearing with regard to the operation of a 4,750 square foot wine production and storage operation in an existing building with proposed future additions totaling 9,340 square feet for wine production, storage and tasting. The site is located at 28126 N. Hansen Road, Prosser, WA 99350 in the Northwest Quarter of the Northeast Quarter of Section 24, Township 9 North, Range 25 East, W.M. consisting of 11.4 acres. The Hearings Examiner approved such action with thirteen (13) conditions to be approved within a year's timeframe.

This is the first extension request pertaining to this application and is being sought in order to give the applicant, Mr. Robert Smasne, an opportunity to complete the conditions of approval for CUP 2015-007. The Benton County Planning Department has had difficulty making contact with Mr. Smasne, as it is our understanding that he travels quite extensively for his work. The extension would give the Planning Department and the applicant, Mr. Smasne, an opportunity to work together to determine the progress made to date on this Conditional Use Permit and report back to the Hearings Examiner.

The Hearings Examiner will need to make a motion whether or not to grant the request for an extension.

Attachments:
October 6, 2016 letter
Findings of Fact/Decision/Conclusion of Law

Benton County Planning Department

Planning Annex, P.O. Box 910, 1002 Dudley Avenue, Prosser WA 99350, Phone: (509) 786-5612 or (509) 736-3086, Fax (509) 786-5629

October 6, 2016

Mr. Robert Smasne
ROS Wine Company
28126 North Hansen Road
Prosser, WA 99350

Via U.S. Mail

RE: Conditional Use Permit
File #: CUP 2015-007

Dear Mr. Smasne,

The Benton County Hearings Examiner approved your Conditional Use Permit (CUP 2015-007) on December 21, 2015 to operate a 4,750 square foot wine production and storage operation in an existing building with proposed future additions totaling 9,340 square feet for wine production, storage and tasting. A copy of her Findings of Fact, Conclusions of Law and Decision have been enclosed with this letter for your convenience.

If you have satisfied the conditions of approval, please inform the Benton County Planning Department in writing with all appropriate documentation. If you are still working on satisfying the conditions, please provide this office a letter outlining your progress to date, the conditions that have been met, if any, the conditions that still need to be completed and the timeframe for completion of all conditions. This office must receive your letter with the above information by November 1, 2016 in order to be placed on the Hearings Examiner's next available agenda.

If the Benton County Planning Department does not receive notification from you by November 1, 2016, it will be assumed that you no longer need the Conditional Use Permit and the application will be deemed null and void.

Thank you in advance for your prompt attention to this matter.

Sincerely,


Clark A. Posey,
Assistant Planning Manager

CAP:alb

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

**In the Matter of Request CUP 2015-007
December 31, 2015**

THIS MATTER came before the Benton County Hearings Examiner on December 21, 2015. The Hearings Examiner makes the following Findings of Fact, Conclusions of Law, and Decision:

1. FINDINGS OF FACT

1.1 Proposal/Project Description. The Applicant, Mr. Robert Smasne, requested a conditional use permit (CUP 2015-007) to operate a 4,750 square foot wine production and storage operation with the intent of constructing a new 3,000 square foot enclosed steel building and a 2,340 square foot roof only steel building for the purpose of wine production and storage on an 11.4 acre parcel. The Applicant also intends to construct a 4,000 square foot wine production/storage/tasting facility with asphalt parking in the future. The Applicant, property owner, project description, and location are as follows:

Applicant: Robert Smasne, ROS Wine Company, LLC, 28126 N. Hansen Road, Prosser, WA 99350

Property Owner: Robert Smasne, ROS Wine Company, LLC, 28126 N. Hansen Road, Prosser, WA 99350

File No.: CUP 2015-007

Site Location: The site is located at 28126 N. Hansen Road, Prosser, WA 99350 in the Northwest Quarter of the Northeast Quarter of Section 24, Township 9 North, Range 25 East, W.M. consisting of 11.4 acres.

1.2 Administrative Record. The Hearings Examiner reviewed the following:

Date	Document Description
December 9, 2015	Agenda
	Planning Department Memo to Hearings Examiner, with Exhibits HEM 1.1-1.8 and HER 1.1-1.3.
December 4, 2015	• HEM 1.1 Staff memo
November 13, 2015	• HEM 1.2 Letter of Completion of Application
November 13, 2015	• HEM 1.3 Notice of Open Record Hearing
November 18, 2015	• HEM 1.4 Kennewick Irrigation District comment
November 25, 2015	• HEM 1.5 Benton Rural Electric Association comment
December 3, 2015	• HEM 1.6 Benton Franklin Health District comment
November 13, 2015	• HEM 1.7 Site map

November 13, 2015	• HEM 1.8 Aerial map of the site
November 12, 2015	HER 1.1 Conditional Use Permit Application
November 4, 2015	HER 1.2 Site plan
November 4, 2015	HER 1.3 Floor plan

Notes --

HEM -- Hearings Examiner Memo exhibits

HER -- Hearings Examiner Record exhibits

1.3 Public Notice. The notice for the Benton County Hearings Examiner Open Record Hearing was published on December 3, 2015 in the Tri-City Herald and mailed to property owners of record within 300 feet of the outer boundaries of the parcel. The Open Record Hearing was scheduled for December 21, 2015. CUP 2015-007 did not require that a Notice of Application be published. No concerns as to notice were raised at the hearing or in comment.

1.4 Hearing. The Hearings Examiner considered the Applicant's request at an open record public hearing on December 21, 2015. The Planning Department briefly summarized the proposal, which the Applicant further described in sworn testimony. This was followed by public testimony. The Applicant then addressed questions which arose from public testimony.

1.5 Testimony and Written Comment. Sworn testimony was provided from three neighboring property owners, Betty Horton, Gary Horton, and Randy Ni. These individuals stated they owned property proximate to the proposal.¹ Concerns raised included those associated with traffic and security impacts.

1.6 Applicant Testimony. The Applicant provided testimony on the proposal and addressed questions from the Planning Department and Examiner. The winery use is in operation. The project is being designed in part to transfer existing operations to the outside of the Applicant's living quarters. As such, the proposal is not intended to result in a significant increase in impacts. There are presently two employees who live off-site; based on parking proposed, this could increase to three with the proposal. Proposed hours of operation are 8:00 a.m. to 9:00 p.m., Monday-Friday, and possibly Saturday. The community, which includes the project site, is gated. Thus, only individuals who have been specifically authorized to access the property would be permitted on site.

The new structures have been oriented closer to the property's eastern side and away from properties owned by the neighbors who provided testimony. The 52.52 acre parcel to the East is undeveloped and predominantly sagebrush. To minimize visual impacts, lighting with respect to the 3,000 square foot proposed wine production facility will not be located on the west and south sides. Vegetation located to the west of the existing home will further help mitigate visual

¹ Mr. Ni owns a 2.75 acre parcel identified as Parcel No. 124951012768003 on HER 1.2; the Nortons own a 2.07 acre parcel identified as Parcel No. 124951013175003 on HER 1.2. These properties are not immediately adjacent to the Applicant's property, but one property over. However, these properties all share a portion of a gated access road, which crosses the Applicant's property. They are also all part of a local homeowners' association which, according to testimony received, has a sharing arrangement for addressing road maintenance.

impacts. Approximately two acres of vineyards will be placed towards the southern, mid-section of the property.

1.7 Application Amendment. Following receipt of public testimony, the Applicant asked the Hearings Examiner about the process for amending a CUP proposal. The Examiner stated that as long as revisions did not enlarge the intensity of the proposed use or otherwise expand it, a proposal could be revised during the hearing to address impacts. Those types of revisions would not alter the date of issuance for a CUP decision (ten days from the hearing). The Hearings Examiner proposed a brief recess. Following the recess, the Applicant requested that his application be amended to remove the words "event center" from the description. As such, the application description was amended at the hearing, by Applicant request, as follows:

To correctly permit the existing 4,750 sf steel building as a wine production/storage use. Construct a new 3,000 sf enclosed steel building and 2,340 sf roof only steel building for the purpose of wine production and storage. Construct a future 4,000 sf wine production/storage/tasting & event center facility and associated asphalt parking area.

With this revision, the individuals who had testified indicated their concerns were addressed and there was no further objection to the CUP.

1.8 Agency Comment. As more fully addressed below, several government agencies submitted written comment, which identified relevant regulatory requirements. Although certain Ecology requirements with respect to vineyards are being revised, the Applicant raised no concerns as to his ability to comply with relevant requirements.

1.9 Zoning Designation. The site is zoned Rural Lands Five District (RL-5), which requires the project to be authorized via conditional use permit. BCC 11.16A.050(j). Procedures and criteria for reviewing a CUP, and requiring Hearings Examiner approval of same, are located at BCC 11.52.089 and .090.

1.10 Site and Surrounding Land Uses. The site is developed as a single family residence and is currently used for wine production. The surrounding properties, zoned as RL-5, are developed as residential, undeveloped, and agricultural. Undeveloped tracts of land, residential single family dwellings on small acreages, and orchards are the main activities within this area.

1.11 Kennewick Irrigation District Comments. The Kennewick Irrigation District had no comments.

1.12 Benton Rural Electric Association Comments. The Benton Rural Electric Association commented that the necessary improvements have been designed.

1.13 Benton Franklin Health District Comments. The Health District commented that it has reviewed the proposal and has no objections provided:

- The wine production facility is served by an on-site sewage system that has been permitted, installed and approved in accordance with Benton-Franklin District Board of Health Rules and Regulations No. 2.
- The site is served by an approved public water supply in accordance with WAC 246-290.
- The event center/²tasting room is served by an on-site sewage system that has been permitted, installed and approved in accordance with Benton-Franklin District Board of Health Rules and Regulations No. 2.
- The event center³ and tasting room will be required to demonstrate compliance with WAC 246-215 and obtain the appropriate permit from this office.

1.14 Signage. The Applicant stated that there will be no signs used with the business activity.

1.15 Employees. The Applicant stated that there will be three non-resident employees.

1.16 Hours of Operation. The Applicant stated that the business hours of operation will be Monday through Friday, and possibly Saturday, 8:00 a.m. to 9:00 p.m. for customers/clients and non-resident employees.

1.17 Noise. The proposal would not create any significant off-site noise impacts. State and local noise requirements will be complied with.

1.18 Odor. No evidence was presented suggesting odor would be a concern.

1.19 Aesthetics. No evidence was presented suggesting the existing and future buildings proposed for the use are or would prove to be inconsistent in appearance with the surrounding area and uses authorized for location within the area. The new structures would be composed of materials similar to those of the existing structures. Structure heights would also be similar. The Applicant testified as to the orientation of the new buildings with respect to the surrounding properties, including vegetation screening of the existing residence, and avoidance of lighting on the west and south sides of the proposed 3,000 square foot enclosed wine production facility. The planned roughly two acre vineyard would provide a visual amenity.

1.20 Water Supply. The property will be served by well water.

1.21 Transportation Impacts. The proposed use would not cause 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 RL-5 zoning district. Non-resident employees are limited in number and operations are not planned to increase significantly beyond the existing use. The tasting room, if developed, will attract visitors, but they will be limited in number and restricted to the proposed hours of operation.

1.22 Health, Safety and Welfare. No evidence was presented suggesting the proposed use would materially endanger the health, safety, and welfare of the surrounding

²The application has since been amended to remove the "event center" use.

³ See footnote above.

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, some of which were initially raised in public comment, and which may be a concern to neighboring residents, such as transportation, noise, aesthetics, and security concerns, are addressed above, including in sections 1.6, 1.7, 1.16, 1.17, 1.19, and 1.21 above.

1.23 Permitted Uses. Due to its orientation, scope, and location on the 11 acre property, the proposed use as shown in the application and as further described at the hearing would not hinder or discourage the development of permitted uses on neighboring properties due to use location, size, or height.

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.

BCC 11.52.090(d). "It is the applicant's burden to present sufficient evidence to allow the above conclusions to be made." *Id.*

2.2 As mitigated, the Examiner concludes the proposed use is consistent with these criteria. The CUP proposal does not create incompatibilities with other uses in the surrounding

area. And, there was no evidence that any outright permitted use would be as incompatible with existing uses in the surrounding area as the proposed use. The proposed use is consistent with the surrounding rural nature of the area, which includes residential and agricultural uses, as well as vacant property.

2.3 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.

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. Non-resident employees are limited in number and tasting room visitors will be restricted to specified hours and be limited in number.

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 applicable health code requirements are adequately addressed. The Applicant will comply with all applicable 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 greater extent than other permitted uses in the applicable zoning district. No evidence was presented indicating there would be a significant impact on neighboring properties or that the use would hinder development of authorized uses in the area.

2.7 As detailed above, the Applicant has addressed all CUP criteria. In summary, the business use is compatible with the principal uses and purpose of the Rural Lands Five Acre zoning district and surrounding land uses. The business will be conducted within an existing structure on site, plus two additional structures and a roof only building for storage and wine production. Signage is limited. The use will comply with all applicable code requirements and the Applicant has proposed mitigation to ensure the use remains compatible with existing and future uses in the area.

DECISION

The Hearings Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves Mr. Robert Smasne's requested CUP to authorize a 4,750 square foot wine production and storage operation in an existing building, with proposed future additions totaling 9,340 square feet for wine production, storage, and tasting, provided the conditions set forth below are met:

1. The Applicant shall notify the Benton County Planning Department in writing when the conditions set forth herein have been completed. The Planning Department shall not

issue the conditional use permit until those conditions have been met. The conditional use permit 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 conditional use permit within one (1) year from the time the Hearings Examiner conditionally approved this permit, the Hearings Examiner may declare this approval null and void at a regular Hearings Examiner meeting. Prior to doing so, the Applicant shall be notified in writing at the Applicant's last known address at least twelve (12) days in advance of the upcoming Hearings Examiner meeting.

3. The Applicant must obtain the appropriate building permits. The Applicant must submit written documentation that all the required permits and approvals have been obtained from the Benton County Building Department. The Applicant shall meet this requirement for any additional buildings that may be constructed on site.

4. The Applicant must provide on his building site plan the area where parking will be designated. If this action becomes a commercial operation with on-site customers and/or tasting room, at least one parking stall must be constructed to meet current ADA (Americans with Disabilities Act) standards for parking.

5. No more than two non-illuminating signs, with a maximum area of four square feet each; or, alternatively, one non-illuminating sign, with a maximum area of eight square feet, shall be permitted in connection with the conditional use permit. Before placing and constructing the signs, the Applicant shall consult with the Planning Department to confirm compliance with all local code requirements.

6. No more than three vehicles marked to identify the business may be on the parcel at any one time. No other on-site outside storage of vehicles, equipment and/or supplies is allowed in connection with the activity. This prohibition applies to, but is not limited to: lumber; plasterboard, pipe, paint, inoperable vehicles, and heavy equipment that are related to the business.

7. The Applicant/property owners/proprietors of the business shall comply with all requirements of the Benton County Building Department, the Benton County Fire Marshal, the Benton Franklin Health District, the Benton County Road Department and all other local, state and federal regulations pertinent to the conditional use permit pursued. The requirements of or permission granted by the Hearings Examiner shall not be construed as an exemption from such regulations.

8. All waste created in association with the business as a result of this conditional use permit must be disposed of off-site in compliance with all local, state and/or federal regulations in a timely manner.

9. All construction activity shall comply with applicable hours of operation and noise requirements.

10. Hours of operation shall be limited to 8:00 a.m. to 9:00 p.m, Monday to Saturday. Delivery vehicles to the business shall be limited primarily to the hours of 7:00 a.m. to 7:00 p.m.

11. Except as may be otherwise provided in these conditions, the proposed use shall be constructed and operated consistent with the Application materials and as further described at the hearing. If any requirements or conditions conflict, the stricter provision shall govern.

12. Activities at the site shall be consistent with the description provided in application materials, and as clarified and amended at the hearing (*i.e.*, the use shall not constitute an "event center"). This includes consistency with the use as depicted in HER 1.2 (Site Plan), including the avoidance of lighting on the south and west sides of the 3,000 square foot wine production facility and location of trees/vegetation to the west of the existing residence.

13. The Applicant shall continue to meet all Conditions while CUP 2015-007 is in effect.

THIS DECISION is entered this 31st day of December, 2015.



Benton County Hearings Examiner
Susan Elizabeth Drummond