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3 **BEFORE THE OFFICE OF THE**
4 **KING COUNTY HEARING EXAMINER**

5 In re the matter of the Appeal by Cougar Hills
6 LLC, d/b/a Crest Estate Winery, and Stephen
7 and Sheri Lee,

8 and

9 Cave B LLC, d/b/a Cave B Estate Winery, and
10 Larry P. and Jane E Scrivanich,

11 Appellants,

12 vs.

13 KING COUNTY,

14 Respondent.

BUSINESS LICENSE APPEAL
NO. BUSL200009

CONSOLIDATED WITH
NO. BUSL200029

APPELLANTS' RESPONSE TO
PETITION FOR INTERVENTION

15 Appellants Cougar Hills LLC, d/b/a Crest Estate Winery, Stephen and Sheri Lee,
16 Cave B LLC, d/b/a Cave B Estate Winery, and Larry P. and Jane E Scrivanich (collectively,
17 "Appellants") submit the following response in opposition to the Petition to Intervene filed by
18 Friends of Sammamish Valley, Hollywood Hill Association, and Michael Tanksley
19 (collectively, "Petitioners"). The Examiner should deny the Petition for Intervention because
20 Petitioners do not have standing, and thus, could be dismissed as improper parties. Moreover,
21 the broad political, environmental, economic, and aesthetic values asserted by Petitioners do
22 not provide sufficient interest in the proceedings to warrant intervention.
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I. ANALYSIS AND ARGUMENT

A. Petitioners’ Lack of Standing Precludes Intervention.

Petitioners do not have standing in the matter before the Examiner. Allowing them to intervene would make them improper parties under the King County Hearing Examiner’s Rules of Procedure (“ROPs”), and may then be dismissed for lack of standing.

KCC 6.01.150.C grants a right to appeal a denial of a business license only to a “person entitled to service under K.C.C. 6.01.130.” Under K.C.C. 6.01.130.A, the only person entitled to service for a determination regarding a business license is “the person whom the director has determined to be in violation of any of the terms and provisions of any business license ordinance.” Appellants are the only persons to whom the director has denied a business license, for purported violation of the terms and provisions of any business license ordinance. Petitioners have no standing to appeal.

Under the ROPs, a party may move to dismiss an appeal by a party who “lacks standing to appeal the decision or action challenged.” ROP VII.B.1.a. Thus, should the Examiner grant Petitioners’ motion to intervene, Appellants (or the County) would be well within their rights to move to dismiss Petitioners for lack of standing.

Moreover, the Petitioners’ lack of standing would not be cured by granting them intervenor status. As the ROPs state, “Granting a petition to intervene does not confer or imply standing to bring an action in a court or other tribunal.” ROP X.B.2.c.4.

The ROPs are to be interpreted consistently with and guided by provisions of the Washington Administrative Procedure Act, Ch. 34.05 RCW (“APA”). ROP I.B. The APA grants standing only to a person whose “asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged.” RCW 34.05.530(2).

1 Here, the only interests the director was required to consider when he denied
2 Appellants' business licenses (i.e. the agency action challenged) were the Appellants.' The
3 Director had no obligation to consider the Petitioners' interests in denying the Appellants'
4 business licenses. As such, Petitioners have no standing in the matter and may not intervene.

5 **B. Petitioners' Broad Political, Environmental, Economic and Aesthetic Concerns**
6 **Do Not Entitle Them to Intervention as a Matter of Right.**

7 Petitioners argue that they are entitled to intervention as a matter of right because the
8 issues before the Examiner "have a direct impact" on Petitioners. ROP X.B.1.a requires
9 intervention only when the law confers an unconditional right to intervene or

10 when a non-party demonstrates a *substantial interest* in the proceeding's subject
11 matter, that such interest is likely to be *directly affected* by the proceeding's result
12 and will not be adequately represented by existing parties, and that intervention will
13 not *impair the orderly and prompt conduct* of proceedings.

(Emphasis added).

14 Petitioners have cited no law conferring an unconditional right to intervene. Nor have
15 they demonstrated a *substantial interest* in the pending appeals' subject matter that is likely to
16 be *directly affected* by the proceeding's result. Moreover, it is highly likely that their
17 intervention will impair the orderly and prompt conduct of the appeal proceedings before the
18 Examiner.

19 Petitioners' interests, as they have laid them out, pertain to policy, legislative and
20 political interests. Friends of Snoqualmie Valley seeks to intervene on behalf of

21 a wide array of individuals, farmers, environmental organizations, homeowner
22 associations and businesses whose goals are to protect the Sammamish Valley
23 Agricultural Production District (APD), protect the Sammamish River watershed,
24 maintain the character of the surrounding Rural Area, and preserve the rural
25 lifestyle for local residents.

1 Dec. of Glover, p. 2. Petitioners claim that the outcome of the business license appeal “would
2 directly and significantly undermine and set back the interests that FoSV has worked to
3 defend” through “hundreds of thousands of dollars, as well as thousands of hours of volunteer
4 time” spent on the GMHB and pending Court of Appeals action regarding King County
5 Ordinance 19030 (collectively, the “GMA Action”). Id. at 4.

6 Similarly, Mr. Tanksley’s and Hollywood Hills’ interest in intervening is “to preserve
7 for generations to come the incalculable environmental, economic, and aesthetic values
8 provided by farmlands and the surrounding rural lands that provide buffers against urban
9 encroachment.” Dec. of Tanksley, p. 4. Petitioners want to intervene because the “land in the
10 vicinity of the Appellants’ commercial businesses includes areas that are already under assault,
11 politically and economically, by actors seeking to profit by converting Agricultural and Rural
12 Areas to urban and urban-serving uses.” Id.

13 While these are laudable goals, they do not demonstrate any direct substantial interest
14 in the appeal of the individual business licenses before the Examiner, or any interest that is
15 likely to be directly affected by the proceeding’s result. The sole issue before the Examiner is
16 the County’s authority to withhold a business license for Appellants’ two small tasting rooms.
17 The Examiner does not have jurisdiction to address the broad political, environmental,
18 economic, and aesthetic values Petitioners seek to protect. Appellants’ licenses are an
19 important asset to these small businesses, and their appeal should not become another
20 opportunity to litigate the GMA Action.

21 **C. Petitioners Have Not Demonstrated an Interest Sufficient to Intervene**
22 **Under CR 24.**

23 Petitioners note that X.B.1 is analogous to Civil Rule (CR) 24 which governs
24 intervention. CR 24 requires “an interest relating to the *property or transaction* which is the
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1 subject of the action and the person is so situated that the disposition of the action may as a
2 practical matter impair or impede the person's ability to protect that interest." (Emphasis
3 added). Petitioners have no interest in the present action that would satisfy the elements of
4 CR 24(a) or any interest that could be impaired or impeded by the disposition of this appeal.
5 Petitioners do not qualify for intervention under CR 24.

6 Clearly Petitioners have no interest in Appellants' properties. Case law cited by
7 Petitioners as allowing "neighboring landowners" the right to intervene are inapposite. In
8 *Nelson v. Pac. Cnty.*, the parties granted intervention were *abutting* landowners. 36 Wn.
9 App. 17, 18, 671 P.2d 785 (1983). In *Loveless v. Yantis*, the intervenors were landowners
10 sharing in a common well and water system and the owner and operator of an adjacent farm.
11 82 Wn.2d 754, 755, fn. 1, 513 P.2d 1023, 1024 (1973). In the case at hand, the only individual
12 seeking to intervene, Mr. Tanksley, lives miles away from Appellants' businesses.

13 The party applying for intervention must show that the action would somehow impair
14 a cognizable interest. *Id.*, 82 Wn.2d at 758-759. For example, in *Loveless*, the party applying
15 for intervention could show specific damages resulting from the land use decision subject to
16 that litigation and "would have had a right to appeal the ruling of the commission had it been
17 adverse to them." *Id.*, at 758. As discussed above, Petitioners would not have had a right to
18 appeal the Director's decision, nor any specific damages resulting from issuance or denial of
19 Appellants' business licenses.

20 Petitioners cannot show an interest in the transaction at hand: the business licenses are
21 personal to the Appellants. Moreover, the disposition of this appeal will not impair or impede
22 the vague, broad interests asserted by Petitioners: the grant or denial of a business license will
23 not resolve the political, environmental, economic, and aesthetic values Petitioners seek to
24 protect by intervening.

1 CR 24 also requires a balancing of the interests of the intervenors with the existing
2 parties, “not only of the absentee in having his interest protected, but also of the parties to the
3 main action in controlling their own lawsuit, and of the public in the efficient resolution of
4 controversies.” *American Discount Corp. v Saratoga West, Inc.*, 81 Wash 2d 34, 42, 499 P.2d
5 869 (1972).

6 Appellants have a right to have the Examiner efficiently adjudicate their rights to obtain
7 a business license. The broad goals cited in Petitioners’ motion and declarations show
8 Petitioners’ intent to have yet another soapbox on which to espouse their displeasure with the
9 County, its policies and legislation. These are political disputes that should not be borne on
10 the shoulders of two small business owners who are merely seeking business licenses.

11 **D. Petitioners Have Not Demonstrated How Their Invention Would Advance the**
12 **Public Interest Without Impairing the Orderly and Prompt Conduct of**
13 **Proceedings.**

14 Petitioners also seek discretionary intervention to “advance the public interest”:

15 Petitioners represent the positions of a broad spectrum of individuals, farmers,
16 businesses, environmental organizations, and homeowner associations. They
17 oppose the location of urban commercial development, including Appellants’
tasting rooms that sell alcohol retail and function as bars, in the Rural Area
because such uses violate the GMA.

18 Petition For Intervention, p. 9.

19 ROP X.B.1.b allows the Examiner the discretion to grant intervention only when “when
20 the intervenor’s participation as a party would advance the public interest, and where
21 intervention will not impair the orderly and prompt conduct of proceedings.” As discussed
22 above, the public interest must have some relation to the outcome. Granting or denying
23 Appellants’ business licenses is not going to resolve the broad political, environmental,
24 economic, and aesthetic values Petitioners seek to raise on behalf of the public. As the
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1 Supreme Court noted in *Chelan Cnty. v. Nykreim*, an intervenors’ abstract interest in preserving
2 the protections of the zoning district in which they lived is not sufficient to support
3 intervention; “an interest must be more than simply the abstract interest of the general public
4 in having others comply with the law.” 146 Wn.2d 904, 935, 52 P.3d 1, 16 (2002).

5 Appellants strongly object that Petitioners’ intervention will clearly “impair the orderly
6 and prompt conduct of proceedings.” Appellants have the right to adjudicate the specific issues
7 relevant to their business licenses without having the proceeding become a bullhorn for
8 Petitioners’ political agenda. The proper fora for Petitioners to air these issues are the GMA
9 Action appeal and legislative arenas, not small business owners’ appeals of the denial of their
10 business licenses.

11 The sole issue before the Examiner is King County’s specific regulatory authority with
12 regard to small tasting rooms and the applicability of specific King County Code provisions.
13 The Examiner’s decision on these matters will not directly affect the broad political,
14 environmental, economic, and aesthetic policy concerns raised by Petitioners.

15 Petitioners respectfully request that the Examiner deny the Petition to Intervention.

16 DATED this 29th day of June, 2022.

17 JOHNS MONROE MITSUNAGA
18 KOLOUŠKOVÁ, PLLC

19 BY 

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23 Cave B Estate Winery, and
24 Larry P. and Jane E Scrivanich, Appellants

25 *2022-06-29 Response to Motion to Intervene Final 01-1971-1*

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DECLARATION OF SERVICE

I, Evanna L. Charlot, am a citizen of the United States, resident of the State of Washington, over the age 18 and hereby state that on this date, I caused to be served a true and correct copy of the foregoing APPELLANTS' RESPONSE TO PETITION FOR INTERVENTION, upon all counsel and parties of record at the address and in the manner listed below.

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I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 29th day of June, 2022, in Bellevue, Washington.

s/Evanna L. Charlot
Evanna L. Charlot