

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

In re the matter of the Appeal by Cave B LLC,
d/b/a Cave B Estate Winery, and
Larry P. and Jane E Scrivanich,

Appellants,

vs.

KING COUNTY,

Respondent.

No.: BUSL200029

AMENDED NOTICE AND STATEMENT
OF APPEAL OF ADULT BEVERAGE
BUSINESS LICENSE DENIAL DATED
MARCH 29, 2022

(CONSOLIDATED WITH BUSL200009)

A. Appellant and Appellant’s Interest and Standing.

This appeal is brought by:

Cave B LLC, a Washington limited liability company d/b/a Cave B Estate Winery
P.O. Box 762
Mercer Island, WA 98040

and

Larry P. and Jane E. Scrivanich
14356 Woodinville-Redmond Rd NE
Redmond, WA 98052

Cave B LLC, a Washington limited liability company, the Applicant for the license that was the subject of the Denial, and Larry P. and Jane E. Scrivanich, the property owners of the property for which the license was denied (collectively “Scrivanich”) (Applicant and

1 Scrivanich are referred to collectively as “Appellants”) bring this appeal to challenge the denial
2 of Adult Beverage Business License, Case # BUSL20-0029 (the “Denial”). This appeal sets
3 forth the Notice of Appeal and the Appeal Statement of Appellants. Appellants have a legal
4 interest and standing to bring this appeal as the property owner and applicant.

5 **B. Jurisdiction.**

6 This appeal is filed to the King County Hearing Examiner consistent with the appeal
7 procedures set forth in the Denial and consistent with KCC 6.74.060 and 20.22.080.

8 **C. Decision Appealed.**

9 The decision being appealed is the March 29, 2022, Denial of Adult Beverage Business
10 License, Case # BUSL20-0029 issued by King County Department of Local Services,
11 Permitting Division, (the “Department”) attached hereto as Exhibit A.

12 Appellants note that the Denial, dated March 29, 2022, was sent by King County
13 Associate Planner, Warren Clauss at **9:42 p.m.** March 29, 2022, well after business hours, with
14 a stated appeal deadline of 7 days from the date of service. Moreover, the Denial cited an
15 appeal deadline of 7 days, which is erroneous. Pursuant to KCC 6.74.060 - Denial, suspension
16 or revocation of license – notice – investigation – appeal, appeals are governed by
17 KCC 6.01.150, which in turn states that “adult beverage businesses appeals under K.C.C.
18 chapter 6.74 shall be filed in accordance with K.C.C. 20.22.080”. KCC 20.22.080.B requires
19 that “the appeal statement must be received by the department or division within **twenty-four**
20 **days** of the date of issuance of the decision by the department or division.”

21 **D. Factual Background and Summary.**

22 The property has been used as a legal wine tasting room since 2011, operating in
23 accordance with inspections by King County.¹ In 2013, Applicant applied for a license for use
24

25 ¹Initially by a different winery, Soft Tail Spirits, which use was approved by King County.

1 of the property as a tasting room, which use was approved by the Washington State Liquor
2 Control Board (“WSLCB”), after opportunity for consultation with King County. Pursuant to
3 RCW 66.24.010(8) and WAC 314-07-020, prior to issuance of a license, the WSLCB must
4 notify the “county legislative authority” of the application for a license, allowing the county
5 twenty days to object to the issuance of a license. The WSLCB also notifies the county upon
6 issuance of any licenses. Applicant has maintained its business and WSLCB licensing from
7 2013 through the present, and has operated continuously since that time. At no time has King
8 County objected to, opposed or appealed that license.

9 In 2018, Appellants applied to King County “to upgrade the former wine tasting room
10 w/Variance (6796) classification permit to a General Food Service establishment” so that it
11 could offer wine at its tasting room in reusable glassware rather than disposable cups. King
12 County approved the licensing change July 20, 2018.

13 In 2016, King County sent a letter to all wineries with associated tasting rooms “on
14 file” with King County, stating:

15 In 2006, when wineries and tasting rooms were beginning to become more common in
16 King County, we established some zoning rules to govern what was a relatively new
17 local land use. Today we see that those zoning rules are in some ways out of step with
18 how the alcohol and beverage industry had developed and matured.

19 As such, the County said it was “initiating a detailed study of the industry. . . [to]
20 examine the industry in the Sammamish Valley area, and other parts of King County, in light
21 of our local zoning regulations. . .” The notice said that, if business owners signed an
22 agreement with the County, pending completion of the study “business owners may continue
23 their current operations during the study period and also while any resulting legislative changes
24 are being considered by the King County Council.” Appellants signed the agreement
25 February 9, 2016.

1 In December, 2019, the King County Council did adopt legislative changes through
2 Ordinance 19030, which includes KCC 21A.55.110, creating “Remote tasting room –
3 demonstration project A” “to provide a mechanism to test and evaluate alternative
4 development standards and processes before amending King County policies and regulations.”
5 KCC 21A.55.010. KCC 21A.55.110.F.3 provides that “Remote tasting room uses approved in
6 accordance with this section may continue as long as an underlying business license or renewal
7 is maintained, and subject to the nonconformance provisions of K.C.C. chapter 21A.32.”

8 Ordinance 19030 also “establishes a business license for the adult beverage industry”,
9 and mandates that “A person or entity shall not operate or maintain an adult beverage business
10 in unincorporated King County unless the business has obtained a business license issued by
11 the director as provided by this chapter.” The newly created County Adult Beverage Business
12 license requires, inter alia, an annual license fee, and requirements regarding sale and
13 distribution of liquor. Ordinance 19030 was challenged before the Growth Management
14 Hearings Board (“GMHB”) on the grounds that it violated SEPA and GMA. The GMHB
15 invalidated the Ordinance in January 2022. That decision is now before the Court of Appeals.
16 The King County Council is also exploring legislative solutions to the challenge.

17 On April 25, 2020, in compliance with the new County Adult Beverage License
18 requirement beginning in 2020, Appellants submitted an application to King County for a
19 Business License Application, Adult Beverage to King County. Due to COVID, King County
20 extended Appellants’ permit until June 17, 2020.

21 On July 2, 2020, Warren Clauss, Associate Planner, Commercial King County
22 Department of Local Services, Permitting Division, emailed Cave B’s Chief Financial Officer
23 Janet Bryan, informing her that, due to the challenge of Ordinance 19030 to the Growth
24 Management Hearing Board, Appellants’ options were to:
25

1 Option 1: King County denies the business license until the current zoning code
2 criteria for manufacturing wineries. At that point, King County would encourage you
3 to re-apply for the Adult Beverage Business License in accordance to the zoning code
4 criteria in effect.

5 Option 2: We can place the adult beverage business license on hold until zoning code
6 criteria for adult beverage businesses is re-established. If you choose this option, you
7 would need to grant approval to extend the decision beyond the time limitation of
8 King County Code 6.74. . .

9 Ms. Bryan informed Mr. Clauss that Appellants opted to continue its current license by placing
10 it on hold and granted approval to extend the licensing decision. On July 13, 2020, Mr. Clauss
11 confirmed that the license would be “placed on hold until further notice.”

12 On or about March 16, 2022, Mr. Clauss called Ms. Bryan to tell her that Cave B’s
13 Adult Beverage License would be denied but that Cave B could withdraw its application and
14 receive a refund of the fee. Mr. Clauss did not discuss the implications of withdrawing the
15 application or any opportunity to challenge a denial. After consulting with their attorney,
16 Appellants opted to have their application be processed. Appellants received the Denial of this
17 Adult Beverage License Application on March 29, 2022, at 9:42 p.m. via email. Appellants
18 hereby submit this appeal of the Denial.

19 **E. Appeal Issues and Relief Sought.**

20 1. Whether the Denial included erroneous citation to appeal provisions, violating
21 Appellants’ right to sufficient time to evaluate the Denial, communicate with the Department
22 on resolution and compile appeal issues?

23 2. Whether the County’s authority to require the Business License Application,
24 Adult Beverage to King County is preempted by RCW 66.08.120, which provides:

25 No municipality or county shall have power *to license the sale* of, or *impose an excise tax upon, liquor* as defined in this title, *or to license the sale or distribution thereof in any manner*; and any power now conferred by law on any municipality or county to license premises which may be licensed under this section, or to impose an excise tax upon liquor, or to license the sale and distribution thereof, as defined in this title, *shall be suspended and shall be of no further effect*: PROVIDED, That municipalities and

1 counties shall have power to adopt police ordinances and regulations not in conflict with
2 this title or with the regulations made by the board.

3 (Emphasis added).

4 3. Whether King County erred in issuing the Denial pursuant given that
5 KCC 6.74.080 provides:

6 For any adult beverage businesses operating under an active Washington state Liquor
7 and Cannabis Board production license issued for their current location before
8 December 31, 2019, and where King County did not object to the location during the
9 Washington state Liquor and Cannabis Board license application process, if all other
10 requirements of this chapter are met, the director shall approve the first adult beverage
11 business license. The first business license shall be valid for six months from the date
12 of issuance. The first business license may be extended, at no charge to the applicant,
13 for an additional six months, if the director determines that the business operator has
14 taken substantial steps to document compliance with K.C.C. Title 21A. Subsequent
15 business licenses or renewals for such locations shall only be approved by the director
16 if:

- 17 1. The requirements to establish a legal nonconforming use have been met;
- 18 2. The applicant has otherwise established a vested legal nonconforming use;
- 19 3. The director determines that the business operator has taken substantial steps
20 to document compliance with K.C.C. Title 21A; or
- 21 4. If the business has come into conformance with the winery, brewery,
22 distillery facility I, II or III or remote tasting room regulations adopted in K.C.C.
23 21A.08.070, 21A.08.080 or K.C.C. 21A.55.110.

24 4. Whether King County erred in issuing the Denial given that
25 KCC 21A.55.110.F.3 provides “Remote tasting room uses approved in accordance with this
section may continue as long as an underlying business license or renewal is maintained, and
subject to the nonconformance provisions of K.C.C. chapter 21A.32.”

5. Whether King County erred in issuing the Denial, given that KCC Chapter
21A.32 allows a use established in compliance with use and development standards in effect at
the time of establishment to be continued so long the use is not discontinued or expanded in a
manner consistent with the chapter. The use of the property as a Remote Tasting Room/Demo
was “in compliance with use and development standards in effect at the time of establishment,”

1 which was confirmed by County by its various approvals since 2013. KCC 21A.32.040. The
2 use has not been discontinued or expanded in violation of KCC Ch. 21A.32.

3 6. Whether the cited provisions in the Denial regarding current zoning code
4 provisions related to setbacks, landscaping and parking are improper bases for denial because
5 of the established nonconforming use?

6 7. Whether the Denial was erroneous for presuming that the County can require a
7 commercial building permit for a legally established nonconforming use?

8 8. Whether the Denial was erroneously issued in light of the February 9, 2016,
9 settlement agreement and attached determination County determination?

10 9. Whether the Denial was erroneous as a result of the Board's order of invalidity,
11 which would have left the vested, nonconforming use legally intact but rendered invalid or called
12 into question any requirement that the vested, nonconforming use obtain a business license? *See*
13 *Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 322 P.3d 1219 (2014).

14 10. Whether the Denial was otherwise unsupported by other provision of King
15 County Code or state law?

16 Appellants respectfully request the Hearing Examiner to review the evidence and legal
17 arguments regarding the Denial reverse and remand the Denial to the Department for further
18 processing consistent with his final decision. Specifically, Appellants request the Examiner
19 conclude (a) that the County's authority to require the Adult Beverage License is preempted
20 by RCW 66.08.120, (b) that the use is a legally nonconforming use that may continue so long
21 as it is not impermissibly expanded or discontinued, and (c) that Appellants are not required to
22 obtain a building permit to convert the use of the building from residential to commercial
23 remote tasting room and demonstrate that it meets the standards in Title 21A Zoning. To the
24 extent the Examiner determines any current zoning provisions must be complied with,
25

1 Appellants ask the Examiner to direct the Department to work with the Applicant towards
2 reasonable compliance rather than outright denial.

3 DATED this 11th day of May, 2022.

4 JOHNS MONROE MITSUNAGA
5 KOLOUŠKOVÁ, PLLC

6 BY 

7 Vicki E. Orrico, WSBA #16849
8 Duana T. Koloušková, WSBA #27532
9 Attorneys for Cave B LLC, d/b/a
10 Cave B Estate Winery, and
11 Larry P. and Jane E Scrivanich, Appellants

12 *2022-05-11 Amended Appeal of Business License Denial 01-1971-1F*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 filed/served a true and correct copy of the foregoing **AMENDED** NOTICE AND STATEMENT OF APPEAL OF ADULT BEVERAGE BUSINESS LICENSE DATED MARCH 29, 2022, to the Hearing Examiner and all counsel and parties of record at the address and in the manner listed below.

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Tel: (206) 477-0860

Via Email:
hearingexaminer@kingcounty.gov
Attn: Jessica Oscoy
Jessica.Oscoy@kingcounty.gov

KING COUNTY Department of Local Services
represented by Warren Claus
35030 SE Douglas Street Suite 210
Snoqualmie, WA 98065
Tel: (206) 263-3377

Via Email:
wclauss@kingcounty.gov

Lena Madden, SDPA
KING COUNTY PROSECUTING
ATTORNEYS OFFICE
516 Third Avenue, Civil Divsn.
Seattle, WA 98104
Tel: 206-263-3643

Via Email:
Lena.Madden@kingcounty.gov

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

Dated this 11th day of May, 2022, in Bellevue, Washington.



EVANNA L. CHARLOT



King County

Permitting Division

Department of Local Services

35030 SE Douglas Street, Suite 210
Snoqualmie, WA 98065-9266

206-296-6600 | Relay: 711

<https://kingcounty.gov/permits>

March 29, 2022

Attn: Janet Bryan
Cave B LLC
P.O. Box 762
Mercer Island, WA 98040

RE: Adult Beverage Business License, Case # BUSL20-0029

Business Name: Cave B Estate Winery

Subject Property: 14356 Woodinville-Redmond Rd NE, Redmond, WA 98052
(parcel # 3404700026)

Dear Janet Bryan,

This letter is to notify you that your adult beverage business license application for a remote tasting room has been denied. After thorough review of the submitted application material, you have not demonstrated how the business complies with the provisions of King County Code (KCC) Title 6 and KCC Title 21A. The existing business has not demonstrated that it complies with King County's rules and regulations in effect at the time of the use.

To qualify as a remote tasting room use, you need to obtain a building permit to convert the use of the building from residential to commercial remote tasting room and demonstrate that it meets the standards in Title 21A zoning, including but not limited to:

- Nonresidential uses in the RA zone are subject to a 30-foot setback from all property lines, per King County Code 21A.12.220. This standard is not met.
- Landscaping is required for a commercial use. This includes ten feet of type III landscaping along street frontages and twenty feet of type I landscaping along any portion of the property adjacent to a residential development, per King County Code 21A.16. This standard is not met.
- Parking and circulation standards in King County Code 21A.18 are required to be met at the time of a commercial building permit. This includes, but is not limited to a 24 foot drive aisles for two-way traffic or 12 foot drive aisles for one-way traffic, minimum parking space dimensions of at least 8 feet by 16 feet, dust-free, all-weather surfacing off-street parking areas, and accessibility standards.

Due to the compliance issues documented above, the subject adult beverage business license cannot be approved and is not compliant with King County rules and regulations. It is important to note that there is a moratorium currently in effect that prevents any new permit application for winery, brewery, distillery, or remote tasting rooms. Until the moratorium is lifted, the King County Permitting Division cannot speculate as to whether there will be any changes to the winery, brewery, distillery and remote tasting room standards that will be in effect once the existing moratorium is lifted.

Should you have any questions about this letter, you can contact me by email at wclauss@kingcounty.gov or by telephone at 206-263-3377.

All applicants are afforded the right to appeal this decision. You can refer to page two for more information about the appeal process.

Sincerely,

A handwritten signature in black ink, appearing to read "Warren Clauss", written in a cursive style.

Warren Clauss,
Associate Planner, Project/Program Manager II
Permitting Division, Department of Local Services

Information: Filing an Appeal
King County Permitting Division

Appeal Notice

Any person entitled to service under K.C.C. 6.01.130 may appeal any notice and order or any action of the director by filing at the office of the director within seven days from the date of service of such order, a written appeal containing;

1. A heading in the words: "Before the Office of the Hearing Examiner";
2. A caption reading: "Appeal of" giving the names of all appellants participating in the appeal;
3. A brief statement setting forth the legal interest of each of the appellants in the business or entertainment involved in the notice and order;
4. A brief statement in concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant;
5. A brief statement in concise language of the relief sought, and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside;
6. The signatures of all parties named as appellants, and their official mailing addresses; and
7. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.
8. \$250 appellant fee as provided in K.C.C. 4A.780.010.A. The fee shall be paid at the time the appeal statement is delivered and is not refundable.

Notification of Appeal Hearing Date

As soon as practicable after receiving the written appeal, the examiner shall fix a date, time and place for the hearing of the appeal. The date shall be neither less than ten days nor more than sixty days from the date the appeal was filed with the director. Written notice of the time and place of the hearing shall be given at least ten days before the date of the hearing to each appellant by the examiner either by causing a copy of the notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the appellant's address shown on the appeal.

Appeal Hearing

At the hearing the appellant shall be entitled to appear in person and be represented by counsel and offer such evidence as is pertinent and material to the action of the director. Only those matters or issues specifically raised by the appellant in the written notice of appeal shall be considered in the hearing of the appeal. Failure of any person to file an appeal in accordance with this section shall constitute a waiver of the person's right to an administrative hearing and adjudication of the notice and order, or any portion thereof.

Additional Information:

For more information about the appeal hearing process, refer to K.C.C. 20.22 or refer to the Hearing Examiner website at: <https://www.kingcounty.gov/independent/hearing-examiner.aspx>