

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

HEARING EXAMINER DAVID SPOHR

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

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

Appellants,

vs.

KING COUNTY,

Respondent.

No.: BUSL200009

AMENDED NOTICE AND STATEMENT
OF APPEAL OF ADULT BEVERAGE
BUSINESS LICENSE DENIAL DATED
MARCH 17, 2022

(CONSOLIDATED WITH BUSL200029)

A. Appellant and Appellant’s Interest and Standing.

This appeal is brought by:

Cougar Hills LLC, a Washington limited liability company d/b/a Cougar Crest Estate
Winery
50 Frenchtown Road
Walla Walla WA 99362

and

Stephen and Sherri Lee
845 S. Placita Hermosura
Green Valley AZ 75614

1 Cougar Hills LLC, a Washington limited liability company, the Applicant for the
2 license that was the subject of the Denial, and Stephen and Sherri Lee, the property owners of
3 the property for which the license was denied (collectively “Lee”) (Applicant and Lee are
4 referred to collectively as “Appellants”) bring this appeal to challenge the denial of Adult
5 Beverage Business License, Case # BUSL20-0009 (the “Denial”). This appeal sets forth the
6 Notice of Appeal and the Appeal Statement of Appellants. Appellants have a legal interest
7 and standing to bring this appeal as the property owner and applicant.

8 **B. Jurisdiction.**

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

11 **C. Decision Appealed.**

12 The decision being appealed is the March 17, 2022, Denial of Adult Beverage Business
13 License, Case # BUSL20-0009 issued by King County Department of Local Services,
14 Permitting Division, (the “Department”) attached hereto as Exhibit A.

15 Appellants note that the Denial, dated March 17, 2022, was sent by King County
16 Associate Planner, Warren Clauss at via email. The email indicated that the actual letter would
17 be “going out in the mail.” Appellants never received a hard copy of the Denial, so it is unclear
18 whether the appeal deadline has begun. Moreover, the Denial cited an appeal deadline of
19 7 days, which is erroneous. Pursuant to KCC 6.74.060 - Denial, suspension or revocation of
20 license – notice – investigation – appeal, appeals are governed by KCC 6.01.150, which in turn
21 states that “adult beverage businesses appeals under K.C.C. chapter 6.74 shall be filed in
22 accordance with K.C.C. 20.22.080.” KCC 20.22.080.B requires that “the appeal statement
23 must be received by the department or division within *twenty-four days* of the date of issuance
24 of the decision by the department or division.” The deadline for appeal from the March 17,
25

1 2022 date, assuming the informal email triggered the appeal period, would be Sunday April 10,
2 2022. As such, this Appeal is timely filed.

3 **D. Factual Background and Summary.**

4 The property has been used as a legal wine tasting room since 2013. In 2013, Applicant
5 applied for a license for use of the property as a tasting room, which use was approved by King
6 County on May 8, 2013, and the Washington State Liquor Control Board (“WSLCB”) on
7 June 6, 2013, after opportunity for consultation with King County. Pursuant to
8 RCW 66.24.010(8) and WAC 314-07-020, prior to issuance of a license, the WSLCB must
9 notify the “county legislative authority” of the application for a license, allowing the county to
10 object to the issuance of a license. The WSLCB also notifies the county upon issuance of any
11 licenses. Appellants have maintained their business and WSLCB licensing from 2013 through
12 the present, and have operated continuously since that time. At no time has King County
13 objected to, opposed or appealed that license.

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

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

20 As such, the County said it was “initiating a detailed study of the industry. . . [to] examine the
21 industry in the Sammamish Valley area, and other parts of King County, in light of our local
22 zoning regulations. . .” The notice said that, if business owners signed an agreement with the
23 County, pending completion of the study “business owners may continue their current
24 operations during the study period and also while any resulting legislative changes are being
25 considered by the King County Council.” Appellants signed the agreement February 8, 2016.

1 The King County Council did adopt legislative changes through Ordinance 19030,
2 which includes KCC 21A.55.110, creating “Remote tasting room – demonstration project A”
3 “to provide a mechanism to test and evaluate alternative development standards and processes
4 before amending King County policies and regulations.” KCC 21A.55.010.
5 KCC 21A.55.110.F.3 provides that “Remote tasting room uses approved in accordance with
6 this section may continue as long as an underlying business license or renewal is maintained,
7 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 March 5, 2020, in compliance with the new County Adult Beverage License
18 requirement beginning in 2020, Appellants submitted an application for a County Adult
19 Beverage License. The License was approved and issued on May 12, 2020. Appellants
20 received a letter from King County extending their County Adult Beverage Business license,
21 which would have expired in November, 2020, another six months until May 12, 2021, due to
22 lack of staffing as a result of COVID, invalidation of KCC 21A.55.110, and a moratorium
23 “prohibiting the expansion of existing or the establishment of new wineries, breweries,
24 distilleries.” Note that Appellants were not expanding or establishing a new winery.
25

1 On November 3, 2021, Appellants received another letter from King County saying “In order
2 to maintain compliance with King County Title 6 – Business Licenses and Regulations, please
3 submit an application to renew your Adult Beverage Business License to King County
4 Permitting Division.” On November 8, 2021, Appellants submitted their renewal application.
5 Appellants received the Denial of this application on March 17, 2022, via email only.
6 Appellants hereby submit this appeal of the Denial.

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

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

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

13 No municipality or county shall have power *to license the sale* of, or *impose an excise*
14 *tax upon, liquor* as defined in this title, *or to license the sale or distribution thereof in*
15 *any manner*; and any power now conferred by law on any municipality or county to
16 license premises which may be licensed under this section, or to impose an excise tax
17 upon liquor, or to license the sale and distribution thereof, as defined in this title, *shall*
18 *be suspended and shall be of no further effect*: PROVIDED, That municipalities and
19 counties shall have power to adopt police ordinances and regulations not in conflict with
20 this title or with the regulations made by the board.

21 (Emphasis added).

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

24 For any adult beverage businesses operating under an active Washington state Liquor
25 and Cannabis Board production license issued for their current location before
December 31, 2019, and where King County did not object to the location during the
Washington state Liquor and Cannabis Board license application process, if all other
requirements of this chapter are met, the director shall approve the first adult beverage

1 business license. The first business license shall be valid for six months from the date
2 of issuance. The first business license may be extended, at no charge to the applicant,
3 for an additional six months, if the director determines that the business operator has
4 taken substantial steps to document compliance with K.C.C. Title 21A. Subsequent
5 business licenses or renewals for such locations shall only be approved by the director
6 if:

- 7 1. The requirements to establish a legal nonconforming use have been met;
- 8 2. The applicant has otherwise established a vested legal nonconforming use;
- 9 3. The director determines that the business operator has taken substantial steps
10 to document compliance with K.C.C. Title 21A; or
- 11 4. If the business has come into conformance with the winery, brewery,
12 distillery facility I, II or III or remote tasting room regulations adopted in K.C.C.
13 21A.08.070, 21A.08.080 or K.C.C. 21A.55.110.

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

18 5. Whether King County erred in issuing the Denial given that KCC Chapter
19 21A.32 allows a use established in compliance with use and development standards in effect at
20 the time of establishment to be continued so long the use is not discontinued or expanded in a
21 manner consistent with the chapter. The use of the property as a Remote Tasting Room/Demo
22 was “in compliance with use and development standards in effect at the time of establishment,”
23 which was confirmed by County by its various approvals since 2013. KCC 21A.32.040. The
24 use has not been discontinued or expanded in violation of KCC Ch. 21A.32.

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

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

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 17, 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 17, 2022

Attn: Deborah Hansen
Cougar Crest Estate Winery
50 Frenchtown Rd
Walla Walla, WA 99362

RE: Adult Beverage Business License, Case # BUSL20-0009

Business Name: Cougar Crest Estate Winery

Subject Property: 14366 Woodinville-Redmond Rd NE, Redmond, WA 98052 (parcel #
3404700027)

Dear Deborah Hansen,

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.
- Nonresidential uses in the RA zone are subject to a maximum impervious surface allowance of 40% of the site area, per King County Code 21A.12.220. The impervious surface percentage on the site exceeds 40%.
- 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.

Should you have any questions about this letter, you can contact me by email at wclaus@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".

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>