

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 Crest Estate Winery, and Stephen
and Sheri Lee,

and

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

Appellants

vs.

KING COUNTY,

Respondent

BUSINESS LICENSE APPEAL

NO. BUSL200009

CONSOLIDATED WITH

NO. BUSL200029

PETITION FOR INTERVENTION

Serena Glover on behalf of Friends of Sammamish Valley (FoSV), a Washington nonprofit corporation, and Michael Tanksley individually and on behalf of the Hollywood Hill Association (HHA), a Washington nonprofit corporation (hereinafter collectively referred to as Petitioners), hereby petition the Hearing Examiner for the entry of an order granting intervention by the Petitioners in all issues raised in the above-captioned appeals.

I. PETITIONERS

1 **A. Friends of Sammamish Valley (FoSV).** FoSV was formed in 2018 for the
2 purposes of protecting the Sammamish Valley Agricultural Production District (APD) and
3 the Sammamish River watershed, preserving the surrounding Rural Area (RA) that buffers
4 the APD, and protecting the environment in accordance with the goals of the Growth
5 Management Act and coordinate laws and regulations. FoSV has been endorsed by hundreds
6 of individuals, farmers, businesses, environmental organizations, and homeowner
7 associations. See [Declaration of Serena Glover in Support of Petition for Intervention](#)
8 [\(“Glover Declaration”\)](#) Para. 3. Petitioner FoSV together with its intervention co- Petitioner
9 HHA, as well as Futurewise, farmers, and others successfully appealed King County
10 Ordinance 19030 (Adult Beverage Ordinance) on State Environmental Policy Act (SEPA) and
11 Growth Management Act (GMA) grounds to the Growth Management Hearings Board
12 (GMHB), which invalidated it. Glover Dec. Paras. 7,8. Additional information regarding
13 FoSV and its interests is provided in the Glover Declaration, attached and incorporated here
14 by reference in its entirety.

15 **B. Hollywood Hill Association (HHA).** HHA was formed in 1976 for the
16 purposes of preserving the rural character of Hollywood Hill, which abuts the Sammamish
17 Valley, and the agricultural lands of the Sammamish Valley. HHA members live on
18 Hollywood Hill, a residential area located in the RA that includes approximately 1350
19 households. In addition to the current GMA litigation with King County, HHA was also one
20 of the petitioners to the GMHB successfully challenging King County zoning code and
21 comprehensive plan amendments that would have allowed conversion of designated and
22 protected Sammamish Valley agricultural land to development for active recreation in
23 violation of the GMA. The Washington Supreme Court upheld the GMHB decision
24 invalidating the amendments. See, *King County v Central Puget Sound Growth Management*
25 *Hearings Board*, 142 Wn.2d 543;14 P.3d 133 (2000). Additional information regarding HHA
26

1 and its interests is provided in the Declaration of Michael Tanksley in Support of Petition for
2 Intervention (“Tanksley Declaration”), attached and incorporated here in its entirety by
3 reference.

4 **C. Michael Tanksley.** Michael Tanksley is the former president and now vice
5 president of the HHA. He also serves as a member of the board of directors of FoSV. He has
6 been involved in issues affecting the Rural Area and the agricultural lands of the Sammamish
7 Valley for the last quarter century, including in code enforcement issues. Additional
8 information regarding Mr. Tanksley and his interests is provided in the Tanksley Declaration.

9 **D. Contact Information for Petitioners and their attorneys.**

10 **Friends of Sammamish Valley**

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12 Mailing Address: 14241 NE Woodinville Duvall Rd, #428
Woodinville, WA 98072
13 Email Address: contact@friendsofsammamishvalley.org
14 Telephone Number: (425) 985-2992

15 **Hollywood Hill Association**

16 Mailing Address: PO Box 404
Woodinville, WA 98072
17 Email Address: c/o_wmtanksley@comcast.net
18 Telephone Number: N/A

19 **Michael Tanksley**

20 Mailing Address: 14551 166th Ave NE
Woodinville, WA 98072
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22 Telephone Number: (425) 483-2529

23 **Peter Eglick and Josh Whited, Attorneys for Intervention Petitioners**

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1 137 Wn.2d 296, 304, 971 P.2d 32 (1999); *Loveless v. Yantis*, 82 Wn.2d 754, 758, 513 P.2d
2 1023 (1973) (granting neighboring landowners' association intervenor status as a matter of
3 right); *cf. Nelson v. Pacific County*, 36 Wn. App. 17 (Div. II 1983), *rev. denied*, 100 Wn.2d 1037
4 (1984) (affirming intervention of group of neighboring property owners in action to quiet title to
5 nearby property).

6
7 “CR 24(a) allows intervention as of right unless it would work a hardship on one of the
8 original parties.” *Columbia Gorge Audubon Society v. Klickitat County, et al.*, 98 Wn. App.
9 618, 623, 989 P.2d 1260 (Div. III 1999).

10 Washington courts have always held that a motion to intervene is timely if it is filed
11 before the commencement of trial. *Columbia Gorge, supra*, 98 Wn. App. at 623; *American*
12 *Discount Corp. v. Saratoga West, Inc.*, 81 Wn.2d 34, 43, 499 P.2d 869 (1972).

13 The term “interest” must be broadly rather than narrowly construed in determining whether
14 intervention is appropriate. *Vashon Island Committee for Self Government v. Washington State*
15 *Boundary Review Board for King County*, 127 Wn.2d 759, 765, 903 P.2d 953 (1995). In keeping
16 with this principle, the Court of Appeals in *Columbia Gorge, supra*, reversed the trial court and
17 ordered grant of intervention for the Yakama Nation, even though the Tribe was “simply
18 another voice asking for the same result as the Audubon Society, only for different reasons.”
19 *Columbia Gorge, supra*, 98 Wn. App. at 628. As the *Columbia Gorge* Court said: “Not much
20 of a showing is required, however, to establish an interest. And insufficient interest should not
21 be used as a factor for denying intervention.” *Id.* at 629.

22
23 As the Washington Supreme Court held in *Loveless v. Yantis*:

24 [w]ith the members of the association here all residents of the area affected, the
25 association has a direct enough interest ...
26

1 82 Wn.2d at 758; see *Crosby v. County of Spokane*, *supra*, at n.4; cf. *Nelson v. Pacific County*,
2 36 Wn. App. 17 (1983), *rev. denied*, 100 Wn.2d 1037 (1984).

3 Further, a difference of interests between named parties and an intervenor is not a
4 prerequisite to intervention:
5

6 It is not necessary that the intervenor's interests be in direct conflict with those
7 of the existing parties. It is only necessary that the interests may not be
8 adequately articulated and addressed [citation omitted]. When in doubt,
9 intervention should be granted.

10 *Columbia Gorge*, *supra*, 98 Wn. App. at 630. As the court stated, "the intervenor need make
11 only a minimal showing that its interests may not be adequately represented." *Id.* at 629-30
12 (citations omitted); see also *Fritz*, *supra*, 8 Wn. App. at 662 (burden on petitioner to show that
13 its interest will not be adequately represented "should be treated as minimal").

14 The facts and circumstances set out in the Glover and Tanksley Declarations,
15 incorporated here by reference, far exceed the showing required for intervention.

16 **B. Petition is Timely**

17 Rule X.B.2.a of the Hearing Examiner Rules requires that a petition to intervene as a
18 matter of right be submitted before or at the pre-hearing conference.¹ The appeals here were
19 apparently not listed on the Hearing Examiner website. Petitioners therefore did not become
20 aware of the appeals and prehearing conference held on May 18th until late in the day on May
21 17th. Once the appeals' existence was known, Marsha Martin, on behalf of FoSV and HHA,
22 contacted the Office of the Hearing Examiner by phone and email on May 18th requesting
23 information relating to them and was provided with call-in information for the pre-hearing
24 conference. Marsha Martin also sent an email prior to the prehearing conference notifying the
25 Hearing Examiner of Petitioners' intent to intervene. Marsha Martin, Serena Glover, and
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¹ The Hearing Examiner also has the discretion to grant an "untimely" intervention request. Further, as noted above, under Washington case law precedent, motions to intervene are timely if brought prior to trial.

1 Michael Tanksley then participated at the prehearing conference and raised their intervention
2 request. It was acknowledged and subsequently placed by the Hearing Examiner on a specific
3 schedule for briefing in his May 19, 2022 Order. This Petition therefore complies with the
4 schedule established by the Hearing Examiner and the Hearing Examiner Rules.

5 **III. BASES FOR INTERVENTION²**

6 **A. Petitioner's Interests (Intervention as a Matter of Right)**

7 The issues raised by Appellants in this appeal have a direct impact on the interests of
8 Petitioners. As explained in the Glover Declaration:

9
10 9. FoSV has invested literally hundreds of thousands of dollars, as well as
11 thousands of hours of volunteer time, in these legal proceedings. FoSV
12 simultaneously has advocated vigorously and consistently to uphold regulations
13 and requirements under, for example, SEPA, GMA, and County Codes and plans
14 that prohibit or significantly restrict the operation of commercial businesses such
15 as winery tasting rooms on Agriculture and Rural zoned land. Appellants'
16 challenges to King County's legal authority to require a business license and their
17 contentions that their tasting rooms were legally established, would directly and
18 significantly undermine and set back the interests that FoSV has worked to
19 defend. The outcome of the appeals here is important to local residents and to
20 operators of legally sited businesses located nearby within the City of
21 Woodinville. The degree to which King County's business license requirements
22 and local land use regulations are or are not enforced, and how they are
23 interpreted/applied will influence actions by landowners, investors and business
24 operators in the Sammamish Valley and surrounding Rural Area for years to
25 come.

26 10. FoSV's participation is important because a ruling in this proceeding that
Appellants are entitled to the licenses at issue in this appeal or are entitled to
operate without them and/or are somehow entitled to operate as licensees despite
governing land use and operating regulations with which they have not complied
would fundamentally impair FoSV's interests and investment in compliance and
the rights of its supporters in use of the Sammamish Valley Agricultural and RA
zones for their intended purposes. Further, FoSV and its supporters/endorsers are
not just concerned about or located in the Sammamish Valley: they seek through

² To avoid needless repetition, Petitioners have not included in the arguments below all of the information set out in the detailed Declarations of Serena Glover and Michael Tanksley. Accordingly, Petitioners respectfully request that the Hearing Examiner closely review the Declarations in their entirety.

1 FoSV to represent and protect the public interest in the 302 square miles of Rural
2 Area across King County whose use and status could be implicated by a decision
in these appeals.

3 Through intervention, Petitioners seek a decision rejecting, inter alia, the Appeals'
4 apparent claims that the King County business license requirement for legal adult beverage
5 businesses is preempted by state law and that the Appellants' tasting rooms were ever legally
6 established.

7 As noted above, Washington courts have held that an intervention petitioner need not
8 establish a direct conflict with, or an actual inadequacy in, a potentially aligned party's (here,
9 the County's) approach. Nonetheless, Petitioners' request for intervention as a matter of right
10 is supported by their ongoing, deep, and substantial interests that are likely to be directly
11 affected by the result of this proceeding and on which the County's and Petitioners'
12 approaches could diverge as the proceeding progresses. In light of the history of litigation
13 between the County³, which is subject to various pushes and pulls, and Petitioners⁴, the
14 County will neither adequately represent Petitioners' positions nor, as further explained below,
15 the greater public interest.

16 **B. Public Interest (Discretionary Intervention).**

17 In the event that Petitioners are not granted intervention as a matter of right, Petitioners
18 request discretionary intervention on all issues because Petitioner's participation would
19 advance the public interest as demonstrated in Petitioners' Declarations. *See, e.g.*, Glover Dec.
20 paras. 9,10, 11, 12, 13; Tanksley Dec. paras. 5,6,7,8. Conversely, denial of intervention would
21 deprive the proceeding of an important public interest perspective that is not always aligned
22 with the County's calculations.

23
24
25 _____
³ *See, e.g.*, Glover Dec. paras. 7,8.

26 ⁴ *See, e.g.* Glover Dec. at para. 11.

1 Petitioners represent the positions of a broad spectrum of individuals, farmers,
2 businesses, environmental organizations, and homeowner associations. They oppose the
3 location of urban commercial development, including Appellants' tasting rooms that sell
4 alcohol retail and function as bars, in the Rural Area because such uses violate the GMA. The
5 importance of having broad public participation in support of these positions in these Appeals
6 cannot be overstated. It will promote public confidence in the openness and fairness of these
7 proceedings.

8 Moreover, although decisions by the King County Hearing Examiner may not at the
9 outset constitute binding legal precedent, rulings by the Examiner on such issues as
10 preemption may have implications beyond the pending appeals. However the Hearing
11 Examiner rules, the ultimate decisions are likely to be taken up in subsequent judicial review,
12 resulting in legal precedent affecting similar businesses throughout King County. When such
13 stakes are present, it is in the public interest to allow discretionary intervention by
14 knowledgeable parties to ensure as complete and informed a record as possible for subsequent
15 review.

16 Finally, Petitioners' participation will not impair the orderly and prompt conduct of
17 the proceedings in this matter and will be governed by the Hearing Examiner's Rules, the
18 Order on Briefing Schedule, Pre-Hearing Conference Order entered on May 19, 2022, and any
19 subsequent orders or rulings entered by the Hearing Examiner.⁵

20 **IV. CONCLUSION: OUTCOME AND RELIEF REQUESTED**

21 Petitioners request that the Hearing Examiner issue an order granting Petitioners'
22 request to intervene in all issues raised by Appellants' appeals as a matter of right, or
23

24 _____
25 ⁵ Several procedural issues, including discovery, hearing schedule, and the like have been expressly deferred by
26 the Examiner to a September 20, 2022 pre-hearing conference. Intervention petitioners will therefore reserve for
later discussion and not take a position on them in this intervention petition.


1 alternatively, as a matter of discretion, with full procedural rights. Petitioners ultimately seek
2 denial and rejection of the appeals.

3 The Petitioners have read the Petition for Intervention and believe the contents to be
4 true.

5 Dated this 7th day of June 2022.

6 Respectfully submitted,

7 EGLICK & WHITED PLLC

8
9 By 

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20 Valley, Michael Tanksley, and Hollywood Hill
21 Association
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CERTIFICATE OF SERVICE

The undersigned certifies that on this 8th day of June, 2022, the undersigned caused the following documents to be served on the persons listed below in the manner shown: **(1) PETITION FOR INTERVENTION, (2) DECLARATION OF SERENA GLOVER IN SUPPORT OF PETITION FOR INTERVENTION WITH EXHIBITS A-C, and (3) DECLARATION OF MICHAEL TANKSLEY IN SUPPORT OF PETITION FOR INTERVENTION**

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Local Services

<input type="checkbox"/>	By United States Mail, postage prepaid and properly addressed
<input type="checkbox"/>	By Legal Messenger or Hand Delivery
<input type="checkbox"/>	By Facsimile
<input type="checkbox"/>	By Federal Express or Overnight Mail prepaid
<input checked="" type="checkbox"/>	By Email: kolouskova@jmmklaw.com orrico@jmmklaw.com charlot@jmmklaw.com

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Signed and certified on June 8, 2022.



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