

July 21, 2022

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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ORDER ON INTERVENTION PETITION

**SUBJECT: COUGAR CREST ESTATE WINERY (BUSL200009), AND
CAVE B. LLC DBA CAVE B ESTATES WINERY (BUSL200029)**

Business License Appeal

Location: 14366 and 14356 Woodinville-Redmond Road NE, Woodinville

Appellants: Cougar Hills LLC (dba Cougar Crest Estate Winery Attn: Deborah Hansen) and
Cave B LLC (dba Cave B Estate Winery Attn: Janet Bryan)
represented by **Duana Kolousková**
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King County: Department of Local Services
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Intervenors: Friends of Sammamish, Hollywood Hill Association, and Michael Tanksley
represented by **Peter Eglick**
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Overview

1. The Department of Local Services (Local Services) denied Cougar Hills’ and Cave B’s Adult Beverage Business License applications; Cougar Hills and Cave B (collectively, Appellants) timely challenged the denial. We consolidated the cases. Friends of Sammamish Valley, Hollywood Hill Association, and Michael Tanksley (collectively, Intervenors) timely sought to intervene. Intervenors filed a formal petition to intervene, as both a matter of right and of examiner discretion, for all appeal issues. Appellants filed an opposition, and Intervenors filed a reply. We conditionally grant intervention, as a matter of discretion, on the eight remaining appeal issues.

Controlling Standard

2. Our rules mandates intervention as a matter of right:

where the law confers an unconditional right to intervene or when a non-party demonstrates a substantial interest in the proceeding’s subject matter, that such interest is likely to be directly affected by the proceeding’s result and will not be adequately represented by existing parties, and that intervention will not impair the orderly and prompt conduct of proceedings.
3. And our rules allow intervention as a matter of discretion:

where the law confers a conditional right to intervene or when the intervenor’s participation as a party would advance the public interest, and where intervention will not impair the orderly and prompt conduct of proceedings.

HER X.B.1. The parties do the best they can reasoning by analogy to the Civil Rules and criteria around standing and who may appeal what, but ultimately those analogies break down; our standard is decidedly different.

4. Our rule on intervention as a matter of right follows the same general form—interest, impact, lack of existing representation—as CR 24(a), but our standard is substantially higher. While in the CR 24(a) context an “interest” may be broadly construed and not much of a showing may be required to establish that “interest,” our rule requires not an interest but a “*substantial interest*.” Compare *Columbia Gorge Audubon Society v. Klickitat County, et al.*, 98 Wn. App. 618, 623, 989 P.2d 1260 (Div. III 1999) with HER X.B.1.a. And while CR 24(a) requires only that the outcome “*may* as a practical matter impair or

impede the person’s ability to protect that interest,” ours requires that the interest be “*likely* to be *directly* affected by the proceeding’s result.”

5. Conversely, our discretionary intervention standard is substantially lower than a court’s. Under CR 24(b), non-agency intervenors are limited to those with a claim or defense having a question of law or fact in common and the main action, while we have the discretion to allow intervention where we conclude it would “advance the public interest.” HER X.B.1.
6. Similarly, the questions of whether the Intervenors have “standing,” whether Local Services was required to consider their interests in deciding whether to grant a business license, and whether Intervenors could have appealed if Local Services had granted the license applications, might have some relevance to the intervention-as-a-right question and whether petitioners have a substantial interest likely to be directly affected by the outcome. And standing might come up later, if Intervenors sought judicial review; our granting a petition to intervene explicitly does not confer or imply standing to bring an action in a court or other tribunal. HER X.B.2.c.4. Yet these issues say little about whether allowing intervention would advance the public interest.
7. Thus, caselaw interpreting CR 24 and various standing provisions are interesting as context, but far from controlling. We next apply our intervention rules to the nine appeal issues before us.¹

Analysis

8. The first issue relates to the erroneously short appeal deadline Local Services provided in its denial letters. That is water under the bridge here, as we provided Appellants time to submit amended appeals. There is nothing further to cover.
9. The second issue is Appellants’ threshold challenge that the County—and indeed any municipality—has no power to regulate adult beverages, the field being preempted by state law. It is here where Intervenors come closest to showing intervention as a matter of right, while Appellants’ pitch that this is a dispute about business licenses personal to Appellants and that the Appellants and County should be allowed to control their own the litigation is the most untethered from reality (we expect better in the future).

A finding of preemption would knock out not only the County’s current adult beverage regulatory system—a topic on which Intervenors have battled the County—but it would eliminate the County’s ability to have *any* such system. It has major implications. Yet, uniquely on this issue, the County-is-not-preempted-from-regulating-in-this-field argument will be more than adequately represented the Prosecuting Attorney’s Office. In fact, while Intervenors have challenged the County’s adult beverage regulations, the County’s attorneys will zealously defend the County’s maximal authority to regulate in the field. However, issue 2 presents the strongest case for discretionary intervention.

¹ Cougar Crest’s amended appeal statement erroneously left out the ninth appeal ground in Cave B’s amendment. And we announced that, having provided Appellants’ with the opportunity to amend their initial appeal, we would not accept the catch-all tenth ground of Local Services’ denial being “otherwise unsupported by other provisions of King County Code or state law.”

10. The remaining appeal issues do not come close to intervention as a matter of right and they do not present as evident a case for discretionary intervention. Item 9, involving the impact of the Intervenor's successful litigation against the County related to the County's beverage ordinance, presents the most amenable remaining issue; Intervenor's are well-situated to provide insight on that topic, insight we expect will differ substantially from the County's.
11. And that leaves issues 3 through 7 (the intersection of beverages licenses, zoning law, and legal nonconformance) and issue 8 (the import of a February 2016 settlement agreement). It may be, as these consolidated appeals play out, that facts and issues emerge specific to either Cave B or Cougar Crest, or even to both, that have little broad implication to adult beverage regulation. On balance we would not find intervention related to such case-specific items in the public interest.
12. However, that is decidedly not true for at least most of the broadly applicable matters Appellants raise in issues 3 through 8. We expect this case to be thoroughly and expertly litigated, and, as Appellants point out, likely to be appealed to superior court regardless of which direction we go. Determinations we make here will likely impact similar, beverage-related appeals. At this early stage of the litigation, we cannot identify even a single appeal issue that appears limited to the specific facts of Cave B's or Cougar Estates' situation.
13. And that brings us to the requirement that intervention not impair the orderly and prompt conduct of proceedings. Appellants assert that it is "highly likely" that intervention will impair that and that Intervenor's will use the proceedings as a bullhorn. That is possible. Intervenor's opening reply line that Appellants have operated as "scofflaws" lends credence to Appellants' arguments, especially given that Appellants here have had their state licenses in place since 2013, signed the 2016 continuing-operating agreements the County sent them, have followed the County's guidance on what to send/apply for since, and timely appealed the recent application denial. While we have a relatively high threshold for such statements from *pro se* litigants, it was not well-received from an attorney and it undercut Intervenor's argument about not impairing proceedings. However, we can cross that bridge if we come to it in the future; a grant of intervenor status is not for time-immemorial.

Conclusion

14. At this point in the litigation, intervention appears to be in the public interest. We GRANT the petition.

DATED July 21, 2022.



David Spohr
Hearing Examiner

July 21, 2022

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CERTIFICATE OF SERVICE

**SUBJECT: COUGAR CREST ESTATE WINERY (BUSL200009), AND
CAVE B. LLC DBA CAVE B ESTATES WINERY (BUSL200029)**

Business License Appeal

I, Lauren Olson, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **ORDER ON INTERVENTION PETITION** to those listed on the attached page as follows:

EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.

placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED July 21, 2022.



Lauren Olson
Legislative Secretary

Bryan, Janet

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Clauss, Warren

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