

BEFORE THE LAND USE HEARINGS OFFICER
CLACKAMAS COUNTY, OREGON

Regarding an Application for a Conditional Use
Permit for a Home Occupation to Host Events.

Case File No: Z0444-21-C
(Parks Event Hosting)

A. SUMMARY

1. The Applicants are Andy and Tracy Parks, and are referred to as the “Applicants” or as the “Parks.” The Applicants own 51.47 contiguous acres located in Clackamas County off SW Pete’s Mountain Road on SW Campbell Lane, comprised of two parcels: a 5.01-acre parcel (31E09 01601) located at 27411 SW Campbell Lane (“Parcel 1”), and a contiguous 46.46-acre parcel (31E09 01500) located at 27400 SW Campbell Lane (“Parcel 2”) (collectively, the “property” or “subject property”). SW Campbell Lane is west of SW Pete’s Mountain Road.
2. The property is zoned AG/F and is designated Forest on the Comprehensive Plan map. Parcel 1 is improved with a dwelling, an accessory structure, a detached 2-car garage, a barn, a well, a septic system and drain field, and paved driveway. The primary access to Parcel 1 and Parcel 2 is via SW Campbell Lane, a rural local road. This site is located on Pete’s Mountain, with attendant slopes, and is roughly rectangular in shape. Otherwise, there are no mapped natural features in the immediate vicinity and no identified natural features of note here. Land use in the surrounding area is mixed, from farm/forest use activities to rural residential use on acreage properties scattered throughout. The Oregon Golf Club is located to the east of the property, and the Sandelie Golf Course is located to the southwest.
3. The Applicants report they are in the process of acquiring from Tracy Parks’ parents another 47.44-acre parcel (31E6 00100) directly south of Parcel 2 (“Parcel 3”) and a 1.23-acre parcel (31E15 00200) east of and contiguous to Parcel 3 (“Parcel 4”). If the Applicants complete these purchases, then the Applicants will own 100.14 acres of contiguous farmland. The Applicants report that they currently farm approximately 21.84 acres of vineyard, with 1.14 acres on Parcel 1, 8.16 acres on Parcel 2, and 12.54 acres on Parcel 3, with some onsite vineyards planted as far back as 1985.
4. The Applicants produce wine from the property’s vineyards under the label Campbell Lane Winery at an offsite production facility. There is no approved winery on the property. However, Applicants market and sell wine on their property, host “wine tastings” at their home, conduct wine club activities, host charitable activities, host outdoor concerts and gatherings, and carry out agri-tourism¹ and other commercial events as if their residence is a winery. These activities resulted in a code violation complaint. The Applicants attempted to

¹ ORS 215.452(14)(a) “Agri-tourism or other commercial events” includes outdoor concerts for which admission is charged, educational, cultural, health or lifestyle events, facility rentals, celebratory gatherings and other events at which the promotion of wine produced in conjunction with the winery is a secondary purpose of the event.”

obtain land use approval for their activities by submitting an application for a winery, and then withdrew that application due to certain dimensional limitations.²

5. The Applicants subsequently submitted this land use application for a conditional use permit for a Home Occupation to Host Events, described in the application as: “to host outdoor events, such as music, family reunions, class reunions, company picnics and other events, weddings, wine tasting or other similar gatherings. Anticipated number of events throughout the year is approximately 170 with a maximum number of guests of 125 during a limited number of summer events and less than 60 throughout the rest of the year.” Further, the application states: “The proposed use will be operated on the premises of the operator’s dwelling and in a proposed building that is associated with uses permitted in the AG/F zone. Specifically, the proposed buildings include a new barn type structure with restrooms and a separate outdoor restroom building with two restrooms.”
6. The County submitted a staff report of its review of this proposal and recommended denial of the application, asserting that the proposed use does not satisfy the requirements of Clackamas County Zoning and Development Ordinance (ZDO) Section 1203.01(d): *“The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which the surrounding properties are located.”* County staff referenced impacts to existing residential uses in the surrounding area (including adjacent properties), and also referenced complaints by neighbors concerning the Applicants’ use of their property, in making this recommendation. County staff reported that, following these complaints, the Applicants submitted an application for “vineyard and tasting room” then withdrew that application “when it became apparent certain dimensional limitations could not be met.”
7. The County scheduled a November 18, 2021 public hearing about this application, via the Zoom platform. On November 16, 2021, the County received correspondence from Edward Trompke, an attorney representing the Applicants, requesting a set-over of the hearing to approximately January 1, 2022. The Hearings Officer discussed this request with the parties at the outset of the November 18, 2021 hearing. The Applicants essentially requested rescheduling of the hearing because they needed additional time to review new information, including the County’s staff report recommending denial of their application, and had just retained counsel on November 16, 2021. The hearing was rescheduled at the Applicants’ request to January 6, 2022 at 1:00 pm, with the County re-issuing public notice of the rescheduled hearing.
8. On January 3, 2022, the County received correspondence from Elaine Albrich (a different attorney representing the Applicants than the counsel hired November 16, 2021) stating that the Applicants only recently retained her, and requesting another set-over of the hearing. Staff directed Ms. Albrich to make this request at the scheduled hearing. On January 5, 2022, Ms. Albrich sent correspondence to the Hearings Officer informing him that the Applicants were requesting a second set-over of the public hearing in this matter and stating that Applicants “will grant an extension of the 150-day clock as needed.” The Hearings Officer

² A winery requires a 100 foot setback. The Applicants’ residence is sited in closed proximity to the property boundary with their neighbors, the Zeners.

discussed this request with the parties at the outset of the January 6, 2022 hearing. The Hearings Officer noted that the public hearing had already been postponed once before, and the deadline for final action on the application was March 3, 2022. The Applicants agreed to waive the timeline and the hearing was rescheduled at the Applicants' request to February 17, 2022 at 9:30 am, with the County re-issuing public notice of the rescheduled hearing.

B. APPLICATION

1. The Applicants originally submitted their application on September 27, 2021, and on October 4, 2021 this application was deemed complete by County staff. In addition to the description of the proposal already restated, the Applicants provided responsive statements identifying the most appropriate land uses for the site, referencing the characteristics of the site and asserting: "The vineyards on Petes Mountain (Petes Mountain Winery, Tumwater Winery, and Campbell Lane Winery) are quickly developing a reputation for producing exceptional wines." The Applicants also asserted: "The State of Oregon has set aside certain areas of the state for vineyards and related uses, such as south facing hillsides in the Willamette Valley. This site is on one of those areas. The site has ideal characteristics for World Class vineyards and wines..."
2. In their application, the Applicants assert that the subject property meets the needs for the proposed use, described as:
 "[Hosting] outdoor events, such as music, receptions, family reunions, class reunions, company picnics and other events, weddings, wine tastings, or other similar gatherings. Anticipated number of events during the year is approximately 170 with a maximum number of guests of one-hundred twenty-five (125) during a limited number of summer events and less than sixty throughout the rest of the year."
3. The Applicants provided a detailed description of the areas of their property they intended to utilize their proposed event-hosting activities. Those areas were described as:
 Outdoor seating/use areas
 South ~ 4,500 s.f.
 North ~ 7,500 s.f.
 Parking ~ 4,800 s.f. (~20 spaces)
 Driveway/traffic circulation ~ 9,700 s.f.
 Barn structure – new ~ 1,500 s.f.
 Weather protected seating
 Restroom structure – new ~ 200 s.f.
 Drain field – new ~ 4,800 s.f.
 To meet the needs of restrooms in new structures
 [Also notes use of ~ 7,200 s.f. (~ 30 parking spaces) on Parcel 2]
4. The Applicants submitted a drawing of their proposed 1,440 s.f. rebuilt barn, also referred to in their initial application under the section for 806.02.C. Type of Buildings as "a barn storage type building" and labeling it on the drawing as "Barn Building to Host Events." The drawing shows a structure with the appearance of a steel barn that could also be a shop or storage building or similar type accessory structure, with what appears four large garage doors.

5. The Applicants also submitted a drawing of their proposed ~200 s.f. “Restroom structure” with their initial application. This drawing shows an approximately 17’ by 12’ structure with the appearance of a small storage shed with a flat, sloped roofline, but does not show any doors or windows or other features.
6. The Applicants reference five separate parcels of property in their narrative response concerning surrounding area uses: These properties include the 5.01 acre Parcel 1 owned by Applicants, the 46.46 acre contiguous Parcel 2 also owned by Applicants, a 5.02 acre adjacent property to the north of Parcel 1 and to the east and south of Parcel 2 referred to as the “Zener” property, a 6.79 acre adjacent property to the east of Parcel 1 referred to as the “Kuznetsov” property, and a 3.77 acre adjacent property to the southeast of Parcel 1 and east of Parcel 2 referred to as the “Bagley” property.
7. In their initial application, the Applicants provided the following explanation concerning how their proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses allowed (and existing residential uses):

“The primary uses in the surrounding area include forest, farming and large lot rural residential. The proposed use is consistent with the rural character of the surrounding area. The immediate surrounding area, i.e., properties north of the PGE power lines that are adjacent to the 5-acre subject property and 46-acre contiguous subject property include six residential homes. The total land area for the six homes, including the land area of the subject properties is in excess of 72 acres. The minimum distance between homes exceeds 150 feet, with the closest home to the subject property located on a 5-acre parcel immediately north and adjacent to the 5-acre subject property (the Zener property).”

“The proposed use, and development site for a replacement barn to host events, is located more than two-hundred feet from the Zener residence and is screened by trees and landscaping, minimizing impacts. Parking is screened from the Zener residence and is more than three-hundred feet away. Noise is directed away from the Zener home. The proposed restroom building will be more than one-hundred feet away from the property line and will not be visible to the Zener property due to topography.”

“The Kuznetsov property to the east and northeast, has a Tuscan home, and a small vineyard. The home on this parcel is located on its northwest corner, with a guest house building approximately 260 feet, and the primary home approximately 300 feet, from the northeast corner boundary to the subject property. The residential use is on the downhill side from the subject property proposed uses, screened from view and noise. The distance to the nearest homes to the east of the subject property is more than five-hundred feet and are shielded from view by mature Douglas firs and maples.”

“Two two-acre homesites were created in 2018 and developed in 2020. These homes are located in the northwest corner of the 46 +/- acre subject property. These homes have a separate driveway from the driveway that serves the two subject properties (subject property and contiguous subject property). The homes are more than 500 feet

from any proposed use, with the exception of traffic access on the driveway serving the subject properties. The driveway used to access the subject properties is greater than 100 feet from both of these residences. Additionally, the driveway is approximately 10-15 feet below grade of the homesites.”

“The 5-acre property immediately to the north of the 5-acre subject parcel has an easement to use the driveway serving the 46+ acre contiguous subject property and 5-acre subject property. The proposed use will not alter the residential, vineyard and forest character of the surrounding area.”

8. In the section addressing standards for home occupations to host events in their initial application, the Applicants stated they reside full-time in their lawfully established home on the tract on which the home occupation is located, and their proposed home occupation will not have more than five employees. With respect to type of buildings, the application form states:

“The proposed use will be operated on the premises of the Operator’s dwelling and in a proposed building that is associated with uses permitted in the AG/F zone. Specifically, the proposed buildings include a barn storage type structure with restrooms and separate outdoor restroom building with two restrooms.”

9. The section addressing standards for home occupations to host events also required the Applicants to provide an additional response concerning the impacts of the proposed use on dwellings even though dwellings are not primary uses in the AG/F district. The Applicants responded:

“Applicant has sited proposed buildings, parking, outdoor event areas to minimize impacts from event activities. The proposed building for event activities is more than two hundred feet from the nearest residence. The west lawn outdoor event area has limited use, i.e. less than twenty events per year, of no more than three hours each, the event area south of the residence is more than one-hundred feet from the property line to the neighboring property to the north (Zener property) and noise and activity in this area is screened by the residence, and the area slopes down and away from the residence to the north. This area is more than two-hundred fifty feet to the south of the residence to the north (the Kuznetsov property). All other homes in the surrounding area are more than five hundred feet and are not visible from the event area. The proposed restroom building will not be visible from any of the adjacent properties and will be more than one-hundred feet from all adjacent property lines.”

10. The section addressing standards for home occupations to host events also required the Applicants to provide a response concerning meeting noise regulation requirements, to which the Applicants responded:

“The vast majority of events planned are indoor and do not include activities, such as music, that generate noise. Per CUP, all events must occur within the hours in this requirement. All events that may generate noise, such as outdoor music and speaking events that use a microphone and or speaker, will include contractual language including noise requirements as noted above to address the issue in advance.”

11. County staff reviewed the Applicants' original application and issued a November 10, 2021 staff report representing the County Planning and Zoning Staff's findings and recommended conditions of approval referenced within the Discussion Section. This report included comments, proposed findings, and proposed conditions of approval, submitted by the County's Department of Transportation and Development (DTD) and the County's Department of Traffic Engineering (TE) in response to the application.
12. The County received only one public comment prior to issuing its November 10, 2021 staff report. This comment was submitted October 27, 2021 by Lavonne Stewart, a neighbor residing on the nearby S.W. Petes Mountain Road, and expressed concern with respect to the noise that would be produced by the proposed events caused by the people and the increased vehicle traffic. Ms. Stewart particularly described how noise "has no boundaries" is "invasive and pervasive" and, when a neighbor living beyond the forest on her property has a party, "the voices and music can be heard inside the privacy of my home."

C. PRE-HEARING PUBLIC COMMENTS

1. The County received numerous written comments in advance of the public hearing in this matter, but subsequent to the County issuing its November 10, 2021 staff report. The County issued an updated staff report on December 17, 2021 referencing these comments, noting that: "Comments submitted are included in the record as exhibits, including dozens which came in within minutes of each other all urging approval. Comments in opposition have been submitted, and are also included as exhibits."
2. The County received written comments submitted by Heidi and Ken Zener, the owners of the adjacent property to the north of the subject property (Parcel 1) in opposition to the proposal. The Zeners report: "For the past 4+ years the Parks have been hosting wine tasting events weekly at their home, as well as other private events, such as graduations, weddings, along with large public gatherings to celebrate the last Friday of every month." The Zeners describe issues with the Parks' guests creating traffic on the driveway they share with the Parks, issues with the Parks' guests parking on their property, trespassing on their property, and getting "many cars per month driving up to our home confusing us with the winery."
3. The Zeners expressed their concerns with respect to road safety, referring to the 800 ft. driveway they share with the Parks, describing it as "basically one lane at 11.5 ft wide. As you enter the private driveway you drive up a steep hill that is approximately 200 ft long with no view of oncoming cars on the road." The Zeners note the proposal's 170 annual events, and estimate of a related 11,584 vehicle trips, expressing concern for public safety, their own safety, and the safety of their pets. The Zeners oppose widening the driveway, contending this will only make traffic faster, and also oppose speed bumps, stating they "would prefer the Parks find a different way to direct traffic to their event center."
4. The Zeners also expressed their concerns with respect to the impacts of parking, referencing the Parks' proposal to provide concrete parking and gravel parking areas on locations less than 10 feet from their common property line. The Zeners point to impacts to their privacy from cars parking in these areas, including charter buses, and other uses of these areas including food carts and portable bathrooms, and "the Cruise Ship type lights that run up our

property line until late hours of the night.” The Zeners point to a grassy area in the Parks’ proposed site plan, describing the area as “feet from our property line” and “located in a field of grass that in the summertime gets very dry and could be a fire hazard.” The Zeners point to the issue of privacy, stating that: “Unfortunately, we have been impacted by the frequency of people using our property for parking, boisterous gatherings next to our fence, & cars coming & going too fast...” and the Parks’ guests trespassing on their property.

5. The Zeners point to the issue of noise, stating: “Besides the loud intoxicated visitors getting into their cars, at our fence, the live music & event cheering floods the area & impacts the neighboring homes. Even though they are proposing to move the activity to a new structure, away from the proximal homes, it would be very difficult to stifle the noise on this mountain.” The Zeners further point to lights used by the Parks, stating: “They have hung a string of lights approximately 250 feet along their driveway (very close to our property line) that are on throughout the evenings, during business hours & beyond.” The Zeners assert the proposal will negatively impact their property value, and submitted a video and photos of the things they described. The photos show the narrow driveway that drops off, creating a potential view hazard, show the parking area adjacent to their property line with dozens of cars parked, giving it the appearance of a public parking lot area, and a picture of the string of lights along their property line, showing substantial glare from these lights. The video shows numerous vehicles parked along the driveway.
6. The County received written comments submitted by Garrett and Ashley Diehl, who reside on nearby property located along SW Campbell Lane and generally strongly support the Parks’ proposal. The Diehls describe the Parks as good neighbors with a unique property and business that “unequivocally betters the community of West Linn and our local neighborhood.” The Diehls do not want to see the roadway that serves these properties widened, reporting that: “In the last 6 months this road at its current size and shape has accommodated a Tualatin Valley Fire Engine, a water tender, a large bus and various other oversized commercial, farm and construction vehicles while serving the winery without interruption or impediment.” The Diehls do express concerns with safety at or near a widened roadway, especially for their young children and family pets. The Diehls propose that, if the roadway is widened, the widening “take place on the downhill side of the existing road or the east side of the road.” The Diehls propose installation of speed bumps to decrease the flow of traffic along this road.
7. The County received written comments submitted by Scott and Hayley McDonald, who also reside on nearby property located along SW Campbell Lane, and report they have spoken with the Parks and have also visited with the Zeners and Diehls about the Parks’ proposal. The McDonald’s express concern about the road and the safety of an additional 11,500 vehicle trips, but would prefer no widening of the existing roadway. The McDonald’s state they are essentially in agreement with the Diehls and the Diehls’ support of the Parks’ proposal.
8. The County received written comments submitted by Tami Panichello, who resides on nearby property located below the Parks’ property and is opposed to the proposal due to the noise. Ms. Panichello states: “During the summer they have live bands with microphones and amplifiers and I cannot go outside without it sounding like the band is right in my backyard.

This happens many times per week. They have wine down Wednesday, last Friday and weekend bands.”

9. The County received written comments submitted by Elaine Newland, Secretary Far West CPO, who resides on nearby property located on SW Pete’s Mountain Road, and strongly supports the Parks’ proposal. Ms. Newland reports that she has lived on Pete’s Mountain road near the Campbell family (Applicant Tracy Parks’ family) for 43 years, residing “less than a 10 minute walk up Campbell Lane.” Ms. Newland reports that Ms. Parks’ father, Leigh Campbell, was planting his grapes when she moved there. With respect to noise, Ms. Newland states that she lives within about 1/3 mile of the subject property and has never heard any music from their location. Ms. Newland states that, by contrast, she can hear the music from the Oregon Golf Course in the summer evenings. With respect to traffic, Ms. Newland states that she has: “...not noticed much of an impact from traffic due to the Campbell’s Tasting Room patron visits.” Ms. Newland reports that about twice a week she walks up Campbell Lane and around a loop near the vineyard, observing increased traffic from “Kirby’s Volleyball Training” on Campbell Lane, and from the four new houses on Campbell Lane. Ms. Newland notes that hosting events is an allowable conditional use within the AG/F zone as long as it doesn’t impact the nature of the neighborhood, reporting she does “...not feel any noise or traffic impacts from events at the Campbell’s Tasting Room.”
10. The County received written comments submitted by 40 different area residents expressing their support for the Parks’ proposal. Nearly all of these comments describe the positive community involvement of the Parks, and describe the Parks as respectful and thoughtful neighbors. Nearly all of these comments also note that the proposed new parking and tasting room facility that the Parks propose will move the events further away from their neighbors’ homes. One of the comments asserted that operation of the Campbell Lane Winery improves property values in the area. Another comment in support stated: “Furthermore, my mother-in-law is a resident of Campbell Lane, and has not expressed any displeasure or nuisance caused by guests of the [Parks’] property. She greatly appreciates and enjoys walking the trails on the [Parks’] property that they have graciously allowed guests and neighboring residents to enjoy.” Another letter of support included the comment: “The reservation system they have implemented [e]nsures minimal impact to their neighbors by limiting the number of guests. It also provides a relaxed and at home environment for their guest.”
11. Sergey and Alice Galtsev submitted written comments strongly supporting the Parks’ proposal, and providing some additional description of the past uses of the property that led to the code complaint referenced in the County’s staff report. The Galtsevs contend that the referenced events were held in 2020 to help people impacted by COVID, the current operation of Campbell Lane Winery is no longer the same, and the impacts mitigated by the changes the Parks have made and are making.

D. PRE-HEARING SUBMITTALS

1. On February 10, 2022, Ms. Albrich provided a pre-hearing submittal on behalf of Applicants containing new language and descriptions of their plans, seeking to modify the descriptions of the proposed events in their application and change their characterization of the proposed “Barn Building to Host Events” to “Tasting Room.” Specifically:

- a. Tasting Room and Tasting Events: “Applicants propose to rebuild an existing barn on Parcel 1 to establish a tasting room and conduct tasting events...During October through late May, tasting events at the tasting room would mostly occur indoors. During June through September, tasting events at the tasting room would occur indoors and outdoors. Outdoor seating would be created to the east of the tasting room with additional outdoor areas (patio and lawn) located south, east and west of the dwelling on Parcel 1.” Applicants re-stated the size and frequency of these events:
- “During October through late-May, the tasting room would host tasting events on a more limited basis (Saturdays and Sundays, 12:00 pm to 5:30 pm and the occasional holiday).
 - Tasting events during October through late-May would have up to a maximum of 50 guests per event (“small tasting event”).
 - Tasting events during October through late-May would average two per week (less than the five times per week allowed under the ZDO).
 - During late-May through September, the tasting room would host tasting events more frequently (Wednesdays 4 pm to 8 pm; Thursdays through Sundays 12:00 pm to 5:30 pm with “Last Fridays” until 9 pm (last week of May-September)).
 - Tasting events on Wednesdays and “Last Fridays” during late-May through September would be up to a maximum of 125 guests per event (“large tasting event”).
 - Tasting events on Thursdays through Sundays (except “Last Fridays”) during late-May through September would have up to a maximum of 50 guests per event (“small tasting event”).
 - Large and small tasting events during late-May through September would average five per week (less than the seven times per week allowed under the ZDO).
 - In addition to the large and small tasting events throughout the year (as described above), Applicants propose to host, on average, 4 non-wine tasting events at the tasting room with up to a maximum of 50 guests per event (“small commercial events”). These small commercial events would be similar in nature and scale to the small tasting events except that wine would not be the primary focus of the event. Instead, the activities may be focused on art, food, fundraising, etc.
 - In total, Applicant proposes up to 134 small tasting and small commercial events (78.8% of 170 total events) per year and up to 24 large tasting events (14.1% of 170 total events) per year at the tasting room, for up to 158 tasting room events (92.9% of 170 total events).
 - The specific hours for all tasting events at the tasting room would be as published on Campbell Lane Winery’s website but in no case would a tasting event begin at the tasting room before 11:00 am. During May through September, all tasting events would end with guests being off the property by 10 pm and any outdoor music stopped by 9 pm.
- b. Seasonal Outdoor Commercial Events: The seasonal outdoor commercial events are events where the sale and promotion of wine is not the primary focus and include but are not limited to events like ticketed farm to table dinners, fundraisers, food festivals and other lifestyle events, outdoor music, celebratory gatherings, and facility rentals. Applicants seek approval to host seasonal outdoor commercial events during June through September. These events would take place either in the tasting room and adjacent outdoor seating area and/or outdoor on the patio area south of and lawn areas, located west and

east of the dwelling on Parcel 1. Additionally, an area east of the vineyard on Parcel 1 may be developed for outdoor gatherings (area around the proposed outdoor accessory structure). The west lawn area use would be limited to dinners or receptions. Musicians would be staged so that they are more than 100 feet from the Zener property line to the north and music is directed to the south and east, towards the woods and undeveloped areas, away from the Zener property.

- Seasonal outdoor commercial events may occur Thursday-Sunday (no Monday-Wednesday) and would not occur when tasting events are happening at the tasting room. On average, Applicants propose about 12 seasonal outdoor commercial events per year (7.1% of 170 total events).
- Seasonal outdoor commercial events would have a maximum of 125 guests per event (less than the 300 allowed under the ZDO). Outdoor seasonal commercial events would not begin before 11:00 am and would end with guests off the property by 10:00 pm (with any music ending by 9 pm).

c. Physical Development Proposed: Applicants provided a revised site plan (Sheet 1) to clarify and modify the site plan included in the original application (Sheet 2) in Attachment 4 (Site Plans) to illustrate modifications to the proposed development. As revised, development on the property will be limited to the following:

- Rebuild the approximately 890 square foot barn on Parcel 1 to accommodate the tasting room operations, with new restrooms served by a new septic system and drainfield on Parcel 1;
- A new accessory structure with restroom and new septic system and drainfield on Parcel 1 (same new septic system and drainfield that will serve the rebuilt barn building) that would serve as storage for the property and provide a bathroom option for guests of the seasonal outdoor commercial events (see Area F on Sheet 2 of Attachment 4);
- Maintaining existing paved and gravel parking area for five employee parking spaces (Area A and B on Sheet 2 of Attachment 4);
- Improve gravel parking area for 17 guest parking spaces (Area F.4 on Sheet 2 of Attachment 4);
- Maintain overflow grass parking area for 34 guest parking spaces (Area H on Sheet 2 of Attachment 4); and
- Improve the existing gravel access road to the vineyard to serve as access for the tasting room and overflow parking (Sheet 1 of Attachment 4);
- Improve the existing driveway to widen for approximately 200 feet to 20 feet, as shown on Sheets 1 of Attachment 4.

2. Applicants' February 10, 2022 pre-hearing submittal also addressed certain other information and comments submitted prior to the hearing. Specifically: the staff report noted that the Applicants originally filed a land use application for a "winery and tasting room" and then withdrew it; references regarding Applicants' activities during 2020 and the COVID lockdown, including allowing certain uses of their property that drew a land use complaint; concerns regarding access/driveway circulation/parking under ZDO 1007 and ZDO 1015; and, compliance with the conditional use criterion ZDO 1203.01(D). Applicants provide this statement with respect to their previous activities:

“Applicants held special event permits from the Oregon Liquor Control Board (“OLCC”) to market and sell wine from Campbell Lane Winery at these pop-up events. These activities drew a land use complaint and Applicants have been working to address it. What Applicants are proposing now in this application is not a continuation of their COVID related activities – the activities in this application have been scrutinized, analyzed, and scaled to ensure that Applicant’s proposal complies with the ZDO and that potential adverse impacts will be minimized and mitigated appropriately.”

3. Applicants’ February 10, 2022 pre-hearing submittal addresses certain written comments and concerns by neighbors Diehls and McDonalds, who each expressed their desire that the driveway not be widened, and that if required to be widened that the widening occur to the east, away from their properties. Neighbors Zeners also submitted comments opposing widening the driveway and opposing other traffic mitigation measures such as speed bumps.
4. The Applicants reference and address these comments by amending their proposal with respect to the size of the rebuilt barn, reducing the footprint of the re-built barn to the original 890 SF size. The Applicants clarify that by reducing the size of the proposed re-built barn from the originally proposed 1,440 SF to an approximately 890 SF barn, no larger than and on the same footprint as the existing barn, they avoid the requirement to widen the driveway for fire access in conformance with guidance by the Tualatin Valley Fire & Rescue and related Fire Access Communication and Guide. The Applicants’ prehearing submittal did not otherwise describe the proposed re-built barn.
5. Applicants’ February 10, 2022 pre-hearing statement addressed additional concerns expressed in written comments submitted by neighbors Zeners over the use of the driveway on Parcel 2, and particularly the portion that serves as the driveway the Zeners use to access their own property. Applicants proposed additional modifications to address these comments, including proposing voluntary modifications to the existing driveway to widen a portion of the driveway to allow two cars to pass on the hill where visibility is limited. In addition, Applicants propose to re-route traffic to use an existing gravel access road through their vineyard instead of using the main driveway that serves the Zener and Parks (Applicants) residences. The Applicants also point to changes made to parking areas, with the smaller parking areas nearer the Zeners’ property limited to five parking spaces, and additional parking further removed from the Zeners’ property in order to further mitigate the impact of traffic and parking on their neighbors.
6. On February 16, 2022, the Applicants submitted copies of corrections they made to the Google road network to correctly complete the map to the correct location and provide accurate verbal guidance to users seeking to locate the Campbell Lane Winery location.
7. On February 17, 2022, the Hearings Officer conducted a public hearing to receive testimony and evidence about the applicant’s proposal for a conditional use permit for a home occupation to host events on the property. The Hearings Officer left the record open for three weeks following the close of the public hearing, as follows: one week for the submission of new evidence, testimony, and argument; one week for responses to the new evidence, testimony, and argument; and, one additional week for the Applicants’ final legal argument.

E. FEBRUARY 17, 2020 HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony and evidence at the February 17, 2022 public hearing about this application. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform due to the coronavirus. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the County's staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. At the hearing, County Planner Clay Glasgow described the application as a proposal to host outdoors events, and discussed the staff report and related exhibits. Mr. Glasgow discussed the staff report and related exhibits, described the surrounding area and existing development uses, including the nearby golf courses to the east, the AG/F zoning for the property and vicinity, the timeline for final action on the application. The Hearings Officer discussed the timeline for the case with the parties, and the additional time periods requested by the Applicants, with the Applicants agreeing to an extension of the 150-day timeline for final action on the application pursuant to ORS 215.427(1) to May 3, 2022.
3. Mr. Glasgow provided discussion and information concerning the staff report and review of the application, and particularly analysis for ZDO 1203.03. Mr. Glasgow noted that the application met related submittal requirements, and noted positive findings for five of the six criteria that must be satisfied to approve the conditional use. Mr. Glasgow explained how ZDO 806 required consideration of impacts on dwellings even though dwellings are not primary uses within this AG/F zoning district.
4. Mr. Glasgow provided additional background information concerning the application, asserting that the effect of noise, traffic, and code violations associated with operation of the Campbell Lane Winery and related wine-tasting events on the subject property without land use approval should be considered in the analysis of ZDO 1203.03(D). Mr. Glasgow asserts that the references to past code violations related to the activities of the Applicants on their property are relevant to this application for this analysis. Mr. Glasgow referenced the findings in the County's staff report that:

“Information in the record (violation file) indicates the use has already apparently resulted in negative impacts on adjoining properties, to include possibly substantially limiting, impairing or precluding use of surrounding properties for residential use. Nothing in the submitted application leads staff to believe that will change moving forward if this proposal is approved. Instead, as frequency of events is planned to increase staff assumes negative impacts will also increase.”
5. Mr. Glasgow reiterated the recommendation that the application be denied due to these negative impacts on adjoining properties, asserting that the proposed event hosting is substantially similar to these past activities on the property and is likely to substantially impair the existing residential use of the adjoining properties, based on the history of these negative impacts.

6. At the hearing, Ms. Albrich provided additional discussion of the Applicants' proposal, noting a number of areas Applicants were seeking to modify from their original proposal stated in their application. Ms. Albrich clarified that the Applicants were seeking approval to re-build an existing barn as a "tasting room" and seeking approval to host "tasting events, including a limited number of seasonal outdoor events, with the "primary purpose to promote and sell Campbell Lane Wines." Ms. Albrich provided additional description of the Applicants' property and Applicants' proposal, describing how it complies with the County's ZDOs. Ms. Albrich pointed to two specific conditions of approval proposed by staff and asserted these two conditions should not be required. These two conditions are essentially the same condition and state that a freestanding restroom building proposed by Applicants is not an allowed structure.
7. Ms. Albrich described the seasonal hours and operations of the events, describing the majority of the events (up to 134) as "small" and involving less than 50 people, with significantly fewer "large" events (up to 24) of up to 125 people during only the summer months. Ms. Albrich also provided a description of approximately 12 additional large seasonal events of up to 125 people that would occur Thursdays, Fridays, and Saturdays in the summer (mostly August) that would comprise about 7% of the annual events.
8. Ms. Albrich discussed the accessory bathroom structure proposed in the application, and the County's position that this structure is not allowed. Ms. Albrich contested this position, asserting that the underlying court case, while similar on its face, did not outright prevent approval of such a structure as it was decided on the particular facts and procedures involved. Ms. Albrich asserted that the referenced underlying court case was based on a lack of substantial evidence to support finding that a stand-alone restroom building was an accessory structure normally associated with uses permitted in the underlying zoning district.³ Applicants did not introduce evidence that a stand-alone restroom building is an accessory structure normally associated with uses permitted in the AG/F zoning district, but did contend that the proposed structure should be approved because it is similar in appearance to a small storage or garden shed as is commonly found in the AG/F zoning district.
9. Ms. Albrich contended that the past tasting event and other activities by the Parks were hosted out of their residence, pointing out that the Applicants propose to host most of these events in their re-built barn building. Ms. Albrich noted that the past activities referenced by the County in its analysis of the impacts of the proposed activities on existing residential uses were hosted by the Parks at their own residence.
10. At the hearing, Ms. Albrich introduced Exhibit 55 that includes additional facts concerning the barn they are proposing to rebuild. Exhibit 55 contains a drawing (more accurately a rendering) of the proposed barn with a substantively different description and drawing of this building, specifically: "Rebuild existing 890 SF barn on Parcel 1 to accommodate tasting room operations with new restroom, septic system/drainfield, and outside patios" providing this rendering of the newly proposed accessory structure and stating that, as part of the

³ Staff and Applicants cite *Herkamp* (Z0540-16-C); Applicants also cite *1000 Friends of Oregon v. Clackamas County*, 309 Or App 499 (2021)

physical development for the property, they proposed to: “Rebuild existing 890 SF barn on Parcel 1 to accommodate tasting room operations with new restroom, septic system/drainfield, and outside patios.” For reference, this is the drawing from Exhibit 55:



11. The Applicants also referenced their plans to: “Construct new 200 SF accessory structure for storage and additional restroom (also connected to tasting room’s new septic system and drainfield)” but did not provide a new drawing of this proposed accessory structure.
12. Mr. Glasgow noted that the Applicants could have processed their proposal differently, as a small winery use with associated wine tasting room. He referenced the Applicants having submitted an application for a winery or vineyard and tasting room and subsequently withdrawing that application when certain dimensional requirements could not be met. Mr. Glasgow agreed these dimensional requirements were different between these types of applications. Mr. Glasgow also noted that this event hosting application was unusual and different from other home occupation event hosting proposals the County had received, stating that the description was a better fit as a winery.
13. Ms. Albrich noted that “This is the path we are on” and asserted that the proposal meets the criteria, describing how different approaches are used in different locales. Ms. Albrich referred to the February 10, 2022 Pre-Hearing Submittal she made on the Applicants’ behalf.
14. Heidi and Ken Zener are the Parks’ neighbors directly to the north of the Parks’ residence on Parcel 1. The Zeners provided public comment and testimony at the hearing concerning the Applicant’s proposal and the impact the Parks’ activities have had on the their residential use of their own property. Mr. Zener described the location of the Parks’ residence as very close

to their common property line, stating that activities the Parks have hosted from their residence, such as tasting events, weddings, and celebrations, have involved bright lights, loud music, people laughing and cheering until late in the evening, disturbing the peace and quiet of his own home. Mr. Zener also described the impact of the many cars the Parks have allowed to park along the driveway and up to the property line. He discussed the Parks' proposal to divert traffic through an existing access through Parcel 2, asserting that, while this will help, this road is a "Y" off their existing shared driveway and most of the shared driveway will still be utilized to access the events. Mr. Zener described speeding cars along the driveway, essentially asserting that this impact will not be adequately mitigated by the change. Ms. Zener corroborated this description of the impacts to the residential use of their property, particularly describing the speeding of cars along the driveway and problems with the Parks not regulating parking along the fence that is their property line.

15. There were additional observers at the hearing who did not participate. The Hearings Officer invited participation in the hearing by submitting written commentary to the address provided by Mr. Glasgow, closed the public hearing, and left the record open for three weeks as stated.

F. POST-HEARING SUBMISSIONS

1. The County received a written comment from Nicole Rhoads submitted during the open-record period. Ms. Rhoads states she shares the concerns expressed by the Zeners with regard to noise and sound levels in general. Ms. Rhoads states that "...we can hear the Oregon Golf course weddings and events coming from the East, and the Polo field and Sandalie Golf ...". Ms. Rhoads states further: "These events usually last a couple hours and all of us are subjected during summer months to hearing loud music not of our choosing." Further, Ms. Rhoads explains: "We can hear peoples radios, conversations, sneezes. I offer this as it illustrates how sound does in fact carry up this hill." Ms. Rhoads listened to the audio recording of the hearing, responding: "I did understand from the hearing that the sound system will be projected towards the south, which should be, I hope, adequate for us as we are north of the winery." With respect to traffic along SW Campbell Lane, Ms. Rhoads also expresses her concern regarding the increased traffic, noting the lack of shoulder areas, and suggesting widening of the lane. Ms. Rhoads asks whether an Environmental Impact Study was done for the proposal, and closes by expressing her support for the Parks, describing how "I have thus far enjoyed having their winery in my neighborhood and have partaken several times."
2. On February 24, 2022, the Applicants submitted additional evidence during the open-record period for consideration in this matter. The evidence submitted by the Applicants was organized into four separate attachments to a cover letter, as follows:
 - Attachment 1 – Distances to Property Lines: This attachment consists of a map identifying the property lines for the Zener and Parks properties, and showing the approximate distances between the existing and proposed structures on these properties. The map shows an approximate distance of ~ 125 feet from the Zener dwelling to the Zener/Parks property line, an approximate distance of ~ 300 feet from the Zener dwelling to the proposed Barn Building to Host Events (now referred to as "Barn/Tasting Room"), an approximate distance of ~ 110 feet from the Zener/Parks property line to the identified Musician/Patio Seating Area adjacent to the Parks' dwelling, and an approximate distance of ~ 70 feet from the Zener/Parks property line to the identified Lawn Area.

- Attachment 2 – Existing Accessory Structure Location: This attachment includes a photo of a small accessory structure under construction on the Parks property identified on Attachment 1 as “Parks accessory dwelling.” The map shows that this structure is located roughly between the Parks’ dwelling and Zeners’ dwelling. The Applicants note that: “We will install landscape, possibly cedar fencing near property line to screen Zener’s.”
 - Attachment 3 – Sound Attenuation Calculation: This attachment provides data supporting the Applicants’ position that music and sound from their property will be less than 60 dB(A) when measured at the Zener/Parks property line, even if musicians play music at 90 dB(A), adding that: “None of the musicians that we have spoke[n] to play music above 90 db at 3 feet from the source.”
 - Attachment 4 – Proposed Accessory Structure Concept: This attachment provides a rough sketch of the proposed restroom accessory structure. The sketch shows an approximately 200 square foot (10 ft. by 20 ft.) building with a “Barn Door” style entrance in front, with additional doors located on each side of the building leading to 6 ft. by 6 ft. bathrooms (Two total bathrooms). The remaining 128 SF is designated as storage.
3. The Applicants submitted a March 10, 2022 final legal argument in support of their proposal. Within this submittal, Applicants reiterate: “Applicant’s proposal, as revised and restated, is significantly less intense than those activities evaluated in the staff report.” Applicants also proposed revisions to the conditions of approval recommended by staff.

G. DISCUSSION

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters.

This application is subject to the standards and criteria of Clackamas County Zoning and Development Ordinance (ZDO) Section 1203. This application is being processed as a Type III Permit, pursuant to Section 1307. A Type III Permit is quasi-judicial in nature, and involves land use actions governed by standards and approval criteria that require the use of discretion and judgment. The issues associated with the land use action may be complex and the impacts significant, and conditions of approval may be imposed to mitigate the impacts and ensure compliance with this Ordinance and the Comprehensive Plan. The Type III procedure is a quasi-judicial review process where the review authority receives testimony, reviews the application for conformance with the applicable standards and approval criteria, and issues a decision.

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Sections(s) 407, 806, 1002, 1005, 1006, 1007, 1009, 1010, 1021, 1203; and the Comprehensive Plan. The Clackamas County Planning and Zoning Staff have reviewed these Sections of the ZDO and Comprehensive Plan in conjunction with this proposal and make the following findings and conclusions, adopted and/or modified or replaced by the Hearings Officer.

PART 1. SUBMITTAL REQUIREMENTS – CONDITIONAL USE PERMIT

Subsection 1203.04 of the Zoning and Development Ordinance lists the information that must be included in a complete application for a conditional use permit.

This application includes a completed land use application form, site plan, application fee and completed supplemental application addressing the criteria in Section 1203 of the ZDO. The application also includes a description of the proposed use and vicinity map. One Preliminary Statement of Feasibility (Exhibit 2) was submitted, for surface water management. All the submittal requirements under Subsection 1203.04 are included in the application. The application was originally submitted on 9/27/21. After sending additional information the application was deemed complete on 10/04/21. The 150-day deadline for processing this application was 3/03/22, but was waived by the Applicants and this deadline was extended to May 3, 2022.

The submittal requirements of Subsection 1203.04 are met.

PART 2. CONDITIONAL USE PERMIT

1. **Subsection 1203.03** of the Zoning and Development Ordinance lists six criteria that must be satisfied in order to approve this Conditional Use.

A. **Subsection 1203.03(A):** *The use is listed as a conditional use in the zoning district in which the subject property is located.*

1. **Section 407, Agriculture Forest (AG/F):** The subject property is zoned AG/F. Section 407 of the ZDO controls land uses in the underlying AG/F zoning district. Table 407-1, lists the conditional uses which are allowed. Under Table 407-1 “*Home occupation to host events, subject to Section 806.*” This proposal involves home occupation to host events. Section 806 is discussed further into the staff report.

The Hearings Officer concurs in the finding by staff that this criterion is satisfied.

B. **Section 1203.03(B):** *The characteristics of the subject property are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.*

1. **Size:** The subject property is approximately 5.0-acres in size, with the adjacent larger parcel in same ownership at approximately 46.39-acres. The submitted site plan, though challenging to interpret, demonstrates the property is of sufficient size to accommodate the proposed event area, along with parking and circulation area, landscaping, etc.
2. **Shape:** The shape of the subject property (TL 1601) is roughly rectangular. This shape does not present any particular limitation to the proposed use of the site.
3. **Topography:** The area proposed for use, near the existing home slopes to the southwest though not so much as to be a limiting factor.

4. Location, area: The site is located in the Pete's Mountain area, between Pete's Mountain Road and Mountain Road, south of Campbell Lane. Land use here is mixed, from farm/forest use activities to rural residential use on acreage properties scattered throughout. The Oregon Golf Club is to the east of the subject, with Sandelie Golf Course to the southwest. There are no mapped natural features in the immediate vicinity. Staff is unaware of any particular location issues that would adversely affect the use.
5. Improvements: The subject property is currently developed with a single-family residence and associated outbuildings.
6. Natural Features:
 - a. Floodplain: none of the subject property is shown as being within a regulatory floodplain.
 - b. Geologic Hazards: nothing of note shows up on the Geologic Hazard maps, regarding this property.

Summary: The shape, topographic and locational characteristics of the property are suitable to accommodate the proposed use. There are no mapped natural features near the proposed location of the additional development on site. The size of the site is adequate to accommodate the proposed event facility.

The Hearings Officer concurs in the finding by staff that these criteria are met.

C. **Section 1203.01(C):** *The proposed use is consistent with Subsection 1007.07, concurrency, and safety of the transportation system is adequate to serve the proposed use.*

1. Subsection 1007.07: Transportation Facilities Concurrency
 - a. Subsection 1007.07(A): *"Shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses."*
 - b. Subsection 1007.09(B): Under ZDO Section 1007.07(B)(5) conditional uses to host events are exempt from the concurrency requirements
2. Safety:
 - a. Subsection 1007.04(D): *"Developments shall comply with the intersection sight distance and roadside clear zone standards of the Clackamas County Roadway Standards. In addition:*
 - i. *No planting, signing, or fencing shall be permitted which restricts motorists' vision; and*

- ii. *Curbside parking may be restricted along streets with visibility problems for motorists, pedestrians, and/or bicyclists as deemed appropriate by the Department of Transportation and Development.”*

Based on vehicular trips to the project site as well as on-site parking and circulation, engineering staff finds that the application is subject to the provisions of *Clackamas County Zoning and Development Ordinance (ZDO)* Section 1007 pertaining to roads and connectivity, ZDO Section 1015 pertaining to parking and loading, and Chapter 4 of the Roadway Standards pertaining to surface water management. As specified under ZDO Section 1007, development applications are required to provide adequate access to current county standards, which may include right-of-way dedication, frontage improvements, on-site access and parking.

The proposed development has frontage along SW Campbell Ln, which is classified as a rural local road. SW Campbell Ln has an existing county right-of-way width of 30-feet from centerline. The subject tax has a previously approved land use for a Measure 49 Claim 3-lot Partition Z0521-12, which required the applicant to dedicate sufficient right-of-way in addition to a minimum 20-foot wide paved private access centered within a minimum 40-foot wide access and utility easement meeting Clackamas County Roadway Standards. The required work was permitted under Development Permit SC001014 and completed and approved December.

ZDO section 1007.09 requires that development is served by a transportation system that has adequate capacity to handle any increased vehicle trips generated by new development. As noted above, under ZDO Section 1007.07(B)(5) conditional uses to host events are exempt from the concurrency requirements.

The Hearings Officer concurs in the finding by staff that these criteria can be met with conditions of approval.

- D. **Section 1203.01(D):** *“The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.”*

Staff report:

1. The property is located in the AG/F zoning district north of SW Homesteader Road. Land Use pattern in the area can best be described as mixed rural/resource use on acreage properties of various sizes. There are vineyards in the area, including on the subject, along with timber properties and non-intensive small farms - along with rural residential scattered throughout. As noted there are two (2) golf course within close proximity.

The primary uses allowed in the AG/F zoning district are listed in Table 407.01, and these listed uses generally favor farm and forest activities.

This criterion does not require that the use have no impacts at all, but instead the impacts must not substantially limit, impair or preclude the use of surrounding properties for the allowed primary uses.

2. The applicant is proposing a use that under the AG/F zoning district is allowed through the conditional use process. Applicant states – *“The proposed use is consistent with the rural character of the surrounding area. The proposed home occupation does not unreasonably interfere with other uses permitted within the AG/F Zoning District. The subject property’s natural features and topography shield properties to the north and east from visual and noise related to the proposed use.”* *“The proposed use will not alter the residential, vineyard and forest character of the surrounding area.”* *“The vast majority of events are indoors, and do not include activities, such as music, that generate noise.”* Applicant provides detail/discussion on area uses to include nearby residences and how impact to those uses will be mitigated by distance, topography etc. Applicant provides extensive discussion on the transportation network and how he believes it is adequate to support the proposed uses.

The applicant contends impacts, particularly noise and visual effects will be mitigated by size of property and setback from adjoining neighbors, along with vegetative buffers. That proposed use will peacefully co-exist with rural residential and farm/forest activities in the area. This view is in contrast to statements/concerns submitted in response to notice of this application.

Typically when considering an application for Conditional Use the use is still in the proposal stage, e.g. is not an existing activity. This particular application was submitted subsequent to a violation file being opened on the property in August 2020. It was alleged the business of hosting groups of people had been occurring for some time, causing negative impacts to the surrounding area. This applicant subsequently submitted application for “vineyard and tasting room” then withdrew that application when it became apparent certain dimensional limitations could not be met. Eventually this application for “Hosting Events” was filed. Whether or not the Board of Commissioners when deciding to allow this type of use (with conditional use in the AG/F zone) considered this application type might be used to provide for 170 “events” in a single year is a discussion for another time.

In response to notice of this application for conditional use, comments have been received from the several area residents, some of which highlight negative impacts associated with the use, particularly noise and traffic (Exhibits). Rather than being based on *potential* impacts, as would typically be the case regarding a proposed activity, these comments are based in actual experience with the use. The submitted comments are focused on negative impacts to residential use on adjacent and area properties, most particularly relative to noise and increased activity in general on the subject property.

Based on testimony in the record, itself based on actual experience with the use, staff is unable to make positive findings for this criterion. Instead, and based on comments born of experience with this use at this location, staff finds the proposed (existing) use will (has) alter(ed) the character of the surrounding area in a manner that substantially limits,

impairs or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s)(and/or residential use) in which surrounding properties are located.

Based upon the above discussion staff concluded that this criterion is not met.

Applicants:

The Applicants assert that the recommendation by staff is inconsistent with its other findings of compliance, and contend that staff improperly interpreted and applied ZDO 1203.03(D). Applicants provided analysis of ZDO 1203.03(D) in support of their contention that this section can be met with conditions.

Applicants note that, in total, five steps should comprise the ZDO 1203.03(D) analysis: 1) Define the “surrounding area”; 2) Identify zoning and existing uses within the surrounding area; 3) Identify potential impacts of the proposed use; 4) Identify the character of the surrounding area, and; 5) Analyze whether the potential impacts of the proposed use rise to such a level as to substantially limit, impair, or preclude the inventoried uses within the surrounding area and consequently alter the character of the surrounding area. Applicants offer the following analysis:

Surrounding Area: Applicants suggest the “surrounding area” should be defined as one-quarter mile from the center of Parcel 1 extending in all directions. Applicants point to staff as not defining the surrounding area except by stating: “The property is located in the AG/F zoning district north of SW Homesteader Road.”

Properties within Surrounding Area: Applicants identify the properties within this surrounding area as zoned AG/F. Applicants point to an aerial photograph and their own input as they live on the property to describe existing uses of the properties within the surrounding area as primarily farm and/or forest uses with some rural residences. Applicants agree with staff that, while residential use is not a primary use within the AG/F zone, existing residential use must be considered in the analysis per ZDO 806.02(E).⁴

Potential Impacts: Applicants identify these potential impacts from their proposed activities:

- **Traffic on SW Campbell Lane and the shared driveway**
- **Noise from the larger tasting events and seasonal outdoor commercial events that have music**
- **Light at night from outside sitting areas and headlights from cars**

Character of Surrounding Area: The surrounding area includes properties that are primarily used for farm activities including vineyards, timber stands, and small and large rural residences.

⁴ ZDO 806.02(E) provides that: “In the AG/F, EFU, and TBR Districts, the evaluation of compliance with Subsection 1203.03(D) shall include consideration of impacts on dwellings even though dwellings are not primary uses in these zoning districts.”

Impact Analysis: The Applicants direct the analysis to “whether the potential impacts identified above would rise to such a level so as to “substantially”⁵ limit, impair, or preclude the inventoried uses within the surrounding area and consequently alter the character of the area. Applicants provided several definitions of these terms, and the following analysis:

- **Traffic:** Applicants point to their proposed modifications to the existing driveway and circulation to address line of sight, safety, and privacy concerns of their neighbors, asserting these measures will minimize and mitigate these traffic impacts. Applicants also contend that an occasional guest turning around in the Zeners’ driveway does not rise to the level of “substantially” impairing their residential use. The Applicants also suggest that by not increasing the size of their re-built barn they likely eliminate the need to widen the entrance to SW Campbell Lane and the driveway, addressing concerns by their neighbors the Diehls and the McDonalds. Applicants assert for these reasons that their proposal will not “substantially” limit the farm, forest, or residential uses of the properties within the surrounding area.
- **Noise:** Applicants suggest that the noise impacting their neighbors would likely come from the music on their property during the summer months, and particularly outdoor music. Applicants note they propose to have music limited to a certain area south of their dwelling, including an outdoor patio east of the proposed tasting room and another outside area “near the new accessory structure.” Applicants assert that noise from these locations will be directed away from neighboring residences towards an area of timber and vineyard. Applicants point to their proposal, stating that all outdoor music would end by 9 pm during the summer and stating that no outdoor music is anticipated during any other time of year. In addition, Applicants point to the recommended condition of approval requiring they comply with the noise regulations in ZDO 806.02(J). Given these factors, “Applicants maintain that any offsite noise will not rise to the level to substantially limit the farm, forest, or residential uses of the properties within the surrounding area.”
- **Light:** Applicants note that most of the activities they propose take place during the day with guests departing by dusk or off the property by 10 pm in the summer and 5:30 pm all other times. Applicants point to the recommended condition of approval requiring all lighting used during events must be arranged and shielded so as not to shine onto adjacent properties or rights of ways. Applicants state they accept this condition, and assert these factors will minimize potential impacts from light such that no farm, forest,

⁵ Applicants provide this definition: “Substantially” is an adverb meaning “in a substantial manner.” “Substantial,” in turn, can be defined as “considerable in quantity, significantly great”).

See <https://www.merriam-webster.com/dictionary/substantially>.

or residential uses of the properties within the surrounding area would be substantially limited.

Substantial Evidence: The Applicants point to the additional evidence and revisions to their proposal, asserting that their proposal would not alter the character of the surrounding area within the meaning of ZDO 1203.03(D). Applicants also assert that staff improperly relied on allegations and complaints by a single neighbor concerning their past activities on the property.

Hearings Officer:

In making a determination concerning ZDO 1203.03(D), the hearings officer must first make a determination identifying the character of the surrounding area, then conduct an inquiry to determine whether the proposed use would: (1) substantially limit; (2) substantially impair; or (3) substantially preclude, the primary identified uses on properties within the surrounding area, essentially altering the character of the surrounding area. The analysis provided by the Applicants includes all of these necessary elements.

As stated by staff these criteria do not require that the proposed use have no impacts at all, but instead the impacts must not substantially limit, impair or preclude the use of surrounding properties for the allowed primary uses.

I agree with Applicants' basic assertion concerning past complaints: the Parks' past activities giving rise to a land use complaint do not show they cannot or will not operate the proposed use in a manner that complies with the ZDO. If their application complies with the approval standards, or if it can be made to comply through amendments to the application or the imposition of reasonable conditions of approval, the hearings officer must approve the application subject to those conditions. ORS 197.522(4).

I also agree with Applicants' identification of the primary types of impacts their proposal may have on existing uses in the surrounding area: Traffic, Noise, and Light. I note that there were references to impacts on property values, both positive and negative. This is not an appropriate "impact" within this analysis of the approval criteria. Alleged property value impacts are not relevant to the applicable approval criteria. The Land Use Board of Appeals ("LUBA") held that "[p]otential loss of property value does not affect the use of surrounding properties for residential and other primary uses within the meaning of ZDO 1203.01(D). . ." *Tylka v. Clackamas County*, 34 Or LUBA 14 (1998).

I disagree with Applicants' assertion that staff did not define "surrounding area." Staff did not copy their staff report description in the discussion concerning ZDO 1203.03(D) but the actual staff report includes an aerial map and provides this description: "Surrounding Conditions: This area on the southwest slopes of Pete's Mountain is in mixed use: farm/forest activities, including vineyards, on properties of various sizes along with rural residential home sites scattered throughout. The Oregon Golf Club is further to the east." Nevertheless, I agree with Applicants'

identification of the “surrounding area” as one-quarter mile extending from Parcel 1. This is the surrounding area most likely affected by the identified impacts of the proposed use and the area relevant to this analysis.

Traffic: The County’s traffic engineering staff analyzed the application and concluded that the existing right-of-way and roadway are adequate to support the proposed event use. There are, however, impacts to the area as described by the Parks’ neighbors. Applicants are proposing modifications to the driveway to help divert traffic directly to their own property. The Zeners’ are probably correct that these measures will not completely eliminate the issue they are having with the Parks’ guests coming up their driveway. However, this issue is more fairly characterized as an annoyance than an impact that substantially impairs the Zeners’ residential use of their property.

I agree with the positions of the Zeners, Diehls, and McDonalds that widening SW Campbell Lane and/or the access driveway these properties utilize is likely to make the issue of speeding worse. Here, the Parks modified their proposal to reduce the size of the re-built barn to its original footprint to avoid requirements to widen the roadway and/or driveway. Again, I note that the County’s traffic engineering staff analyzed the application and concluded that the existing right-of-way and roadway are adequate. I agree with the general proposition that additional traffic is an impact, and speeding cars a hazard and safety concern, but do not find substantial evidence that these impacts will substantially limit, impair or preclude the use of surrounding properties for the allowed primary uses and existing residential uses of these properties.

Noise: I found persuasive the comments and testimony provided by Heidi and Ken Zener that the noise from the various activities, particularly the live and/or amplified music and outside use of a PA system, and private events such as weddings and graduations, large public gatherings for celebrations with loud people and cheering, significantly impacted them and impaired the residential use of their property. Ms. Stewart also made a general assertion concerning the extent music and noise travels through this area.

The Zener’s residence is approximately 125 ft. from the Zener/Parks property line and they are the Parks’ closest neighbor. The lawn area where the Parks have hosted outdoor events in the past is approximately 70 ft. from the Zener/Parks property line, and the patio seating area adjacent to the Parks’ residence is approximately 110 ft. from the Zener/Parks property line. Applicants point to changes they are making to help lessen these impacts. Applicants propose to stage musicians so that they are more than 100 feet from the Zener property line and direct any music away from neighboring residences towards an area of timber and vineyard. Applicants also to the recommended condition of approval requiring they comply with the noise regulations in ZDO 806.02(J). The Applicants submitted sound attenuation calculations supporting their assertion that noise and music from their property will decrease to less than 60 dB(A) at the property line. I agree with Applicants that compliance with these adopted standards will help reduce the

impact of noise on other property uses in the surrounding area. I also refer to the statement in the original application that the Applicants will include contractual language imposing noise restrictions in their Event hosting operations.

Further, as referenced by Mr. Glasgow at the hearing, this application is for approval of a conditional use permit to operate a home occupation to host Events, and not an application to operate a winery. Many of the Parks' activities that gave rise to the noise issue that affected their neighbors (such as outside concerts open to the public) *are not allowed under this type of conditional use because they are not "Events"* within the meaning of Section 806. The Barn Building to Host Events proposed by Applicants is located approximately 300 ft. from the Zener/Parks property line. Thus, many of the Parks' activities will be located in the Barn Building to Host Events accessory structure located about 200 feet further away from the Zener/Parks property line than the past activities.

Given the fact that the Barn Building to Host Events associated with the event hosting is about 300 feet from the Zener/Parks property line, and the other factors discussed above, I find substantial evidence to support finding that the noise from the activities *allowed by this conditional use* will not rise to the level of substantially limiting the farm, forest, or residential uses of the properties within the surrounding area, although the music and noise may continue to be an annoyance.

Light: The Zeners made several comments describing the impact of lights, and provided photos and a video showing the Parks' brightly shining lights, with lights and glare extending well past their own property. I note that staff proposed a condition that:

"Any outdoor lighting [ZDO 1005.05(A) and (B)] and 806.02(I) shall be located and designed so that it does not shine onto adjacent properties, upwards, or onto right-of-ways. If additional lighting will be installed, the applicant will submit an outdoor lighting system design plan prior to installation of the outdoor lighting system for review and approval by Planning and Zoning Division."

Although this provision will not eliminate the impact of lights on the Parks' neighbors, particularly from headlights, I find this provision adequate to prevent these impacts from substantially limiting, impairing or precluding the use of surrounding properties for the allowed primary uses and existing residential uses of these properties.

Fire Hazard: The Zeners reference the parking area the Applicants refer to as overflow parking, describing this area as a field of grass that gets very dry in the summertime and could be a fire hazard. For this same reason, I agree with the recommendation by staff requiring that: "Dry season parking may be placed on hardy grass or approved soft surface." Given this condition, I do not find substantial evidence that the alleged potential impacts of parking on dry grass will

substantially limit, impair or preclude the use of surrounding properties for the allowed primary uses and existing residential uses of these properties.

E. **Section 1203.01(E):** *“The proposal satisfies the goals and policies of the Comprehensive Plan that apply to the proposed use.”*

1. The applicant has briefly addressed the Comprehensive Plan focusing mainly on vineyard uses and agri-tourism, e.g. not directly comparing the use of “Hosting Events” generally to the applicable criteria.

The subject property is designated Forest on the Comprehensive Plan map. The Forest Land Use Section in Chapter 4 of the Comprehensive Plan implements the Forest Plan Designation.

The applicant states “The site has ideal characteristics for vineyards and World class vineyards and wine.” See submitted application for further discussion from applicant.

The subject property falls within the Forest plan designation, from Chapter 4 – Land Use. Relevant policies from Chapter 4 have been reviewed and staff does not see any conflicts.

a. Chapter 5, Transportation:

Access Standard Policies include: Access standards shall be implemented through the Zoning and Development Ordinance and the County Roadway Standards. Where access management standards are adopted by the County in Special Transportation Plans, those standards shall apply. Traffic Engineering staff submitted comments on this proposal as discussed throughout this report and as Exhibit #5. As conditioned, this proposal satisfies applicable portions of Chapter 5 of the Plan.

Planning Staff refers to comments submitted from Traffic Engineering, duplicated elsewhere in this report. As noted, this section is satisfied.

The Hearings Officer concurs in the finding by staff that these criteria can be met with conditions of approval.

F. **Section 1203.01(F):** *The proposed use complies with any applicable requirements of the zoning district and overlay zoning district(s) in which the subject property is located, Section 800, and Section 1000.*

Sections: 1002, 1005, 1006, 1007, 1008, 1009, 1010, 1015, and 1021 were reviewed.

1. Section 1002, Protection of natural Features:

Subsection 1002.04(B), Trees and wooded areas to be retained shall be protected during site preparation and construction according to County design and specifications by:

- a. *Avoiding disturbance of the roots by grading and filling activity;*

- b. *Providing for water and air filtration to the roots of trees which will be covered with impermeable surfaces;*
- c. *Pruning or topping of trees which will be in parking areas or near buildings, as necessary, to maintain proper balance between top growth and roots, reduce windfall potential, and provide adequate vision clearances for safe vehicular circulation; and*
- d. *Requiring, if necessary, the advisory expertise of a qualified consulting arborist or horticulturist both during and after site preparation, and a special maintenance/management program to provide protection of specified wooded areas or specimen trees, as recommended by the arborist or horticulturist.*

The applicant addresses Section 1002 in the submitted application materials. The property is part of a working vineyard, along with stands of timber particularly along the eastern portion of the site. There are no mapped natural features of note. There is no significant vegetation removal planned through this application. Slopes at activity locations are less than 20%.

The Hearings Officer concurs in the finding by staff that these criteria are met.

2. Section 1005, Sustainable Site and Building Design:

Section 1005 of the ZDO sets forth the standards, requirements and considerations that pertain to additional techniques to meet sustainability goals. This proposal involves use of an existing barn, and part of the house and another building along with outdoor areas for use as well. It is the rural character and charm of the site that applicant hopes will attract users. No new construction is planned at this time.

a. Subsection 1005.05, Outdoor Lighting:

1. Subsection 1005.05(A), Outdoor lighting devices:

A. Outdoor lighting devices:

- i. *“Shall be architecturally integrated with the character of the associated structures, site design and landscape.*
- ii. *Shall not direct light skyward.*
- iii. *Shall direct downward and shield light; or direct light specifically toward walls, landscape elements or other similar features, so that light is directed within the boundaries of the subject property;*
- iv. *Shall be suitable for the use they serve, e.g. bollard lights along walkways, pole mounted lights for parking lots;*

- v. *Shall be compatible with the scale and intensity of uses they are serving. Height of pole mounted fixtures shall not exceed 25 feet or the height of the tallest structure onsite, whichever is less; and*
- vi. *At entrances, shall be glare-free. Entrance lighting may not exceed a height of 12 feet and must be directed downward."*

Staff report: Applicant states events will generally be held indoors. New commercial "barn" is proposed for use, 1,440 square feet in size. There is also a proposed free-standing site built restroom building. In light of recent decision which determines such structures are not typically accessory to farm use (see Z0541-19-C, Herkmap appeal) staff suggests this be a discussion item at hearing.

Regarding lighting in association with the proposal, applicant suggests a site lighting plan will be submitted if use is approved.

The Applicant requested deletion of a condition of approval proposed by staff requiring that Applicants submit a site lighting plan. I find the language will help ensure that lighting on the property will be directed downwards and directed within the boundaries of the property and, particularly relevant to the complaint by the Zeners, help ensure that entrance lighting meets requirements. I also noted this statement in the original application reviewed by staff: "The applicant will submit lighting plans in compliance with Section 1005.05(A) and (B) when CU is approved."

The Hearings Officer finds that, as conditioned, the standards of Section 1005 can be met.

2. Section 1006, Water Supply, Sanitary Sewer, Surface Water; and Utilities Concurrency:

Section 1006 of the ZDO sets forth the standards, requirements and considerations that pertain to utility lines and facilities.

a. Subsection 1006.05 – Water Supply Standards Outside The Portland Metropolitan Urban Growth Boundary And Mount Hood Urban Area.

- i. The provisions of this section apply outside the Portland Metropolitan Urban Growth Boundary and the Mount Hood urban area. Applicants for any development permit shall specify a lawful water source for the proposed development, such as a public or community water system, certificated water right or exempt-use well.

The site is served by an on-site well.

The Hearings Officer concurs in the finding by staff that this criterion is met.

b. Subsection 1006.07 - Subsurface Sewage Disposal Standards:

All development proposing subsurface sewage disposal shall receive approval for the system from the Clackamas County Septic & Onsite Wastewater System Programs prior to submittal of a land use application to the County for development.

The subject property is not located in a public sanitary sewer district. Sewage disposal for existing development on site is accommodated by an on-site septic system. Section 806 provides for use of porta-potties for this type of use.

The Hearings Officer concurs in the finding by staff that this criterion can be met with conditions.

c. Subsection 1006.08 - Surface Water Management Standards:

- i. *“All developments shall provide for positive drainage and adequate conveyance of storm and surface water runoff from roofs, footings, foundations, and other impervious or near-impervious surfaces to an appropriate discharge point and shall:*
 1. *Comply with the requirements of any special districts with surface water management regulatory jurisdiction; or*
 2. *The requirements of Section 1008 and the County Roadway Standards in areas not under the jurisdiction of a surface water management regulatory authority.*
- ii. *Installation of stormwater management and conveyance facilities shall be coordinated with the extension of necessary water and sanitary sewer services.*
- iii. *Approval of a development shall be granted only if the applicant provides a preliminary statement of feasibility from the surface water management regulatory authority. The statement shall verify that adequate surface water management, treatment and conveyance is available to serve the development or can be made available through improvements completed by the developer or the system owner.*
 1. *The service provider may require a preliminary storm water management plan, storm drainage report, natural resource assessment and buffer analysis prior to signing the preliminary statement of feasibility.*
 2. *In those areas that are not within a surface water management district, the preliminary statement of feasibility shall be signed by the Surface Water Management Agency of Clackamas County (SWMACC).*
 3. *The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve surface water treatment and conveyance system capacity for the development.*

DTD Engineering is the surface water authority in the area and signed off on the Statement of Feasibility on 9/27/21, indicating it is feasible the proposal can comply with the standards.

The Hearings Officer concurs in the finding by staff that the standards of Section 1006 can be met.

3. Section 1007, Roads and Connectivity:

a. Subsection 1007.03 – General Provisions:

- i. *The location, alignment, design, grade, width, and capacity of all roads shall be planned, coordinated, and controlled by the Department of Transportation and Development and shall conform to Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards. Where conflicts occur between Section 1007, the Comprehensive Plan, and the Clackamas County Roadway Standards, the Comprehensive Plan shall control.*
- ii. *Right-of-way dedications and improvements shall be required of all new developments, including partitions, subdivisions, multifamily dwellings, two- and three-family dwellings, condominiums, single-family dwellings, and commercial, industrial, and institutional uses, as deemed necessary by the Department of Transportation and Development and consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.*

Staff report: Based on vehicular trips to the project site as well as on-site parking and circulation, engineering staff finds that the application is subject to the provisions of *Clackamas County Zoning and Development Ordinance (ZDO)* Section 1007 pertaining to roads and connectivity, ZDO Section 1015 pertaining to parking and loading, and Chapter 4 of the Roadway Standards pertaining to surface water management. As specified under ZDO Section 1007, development applications are required to provide adequate access to current county standards, which may include right-of-way dedication, frontage improvements, on-site access and parking.

The applicant has proposed a conditional use for hosting events on a 5-acres property (TL 1601) located along SW Campbell Lane, which is classified as a rural local road. SW Campbell Ln has an existing right-of-way width of 30-feet from centerline. The subject property was subject of a previously approved land use for a Measure 49 Claim 3-lot Partition Z0521-12, which required the applicant to dedicate sufficient right-of-way in addition to a minimum 20-foot wide paved private access centered within a minimum 40-foot wide access and utility easement meeting Clackamas County Roadway Standards. The required work was permitted under Development Permit SC001014 and completed and approved. Based on this, the existing right-of-way and roadway are adequate to support the proposed event use.

Applicants: The Applicants point to the review of this section by the County's transportation engineer concerning the access to the property from SW Campbell Lane off Pete's Mountain Road and related improvements completed to this access, supporting a finding that these criteria have been met.

Applicants discuss comments made by the Diehls and the McDonalds indicating their desire that the driveway not be widened and, if required, the widening occur to the east and away from their properties. Applicants also discuss comments by the Zeners opposing widening the driveay and opposing other traffic-slowing measures such as speed bumps. Applicants point to revisions in their proposal that would not require widening the driveway. Specifically, if Applicants do not increase their barn's footprint, then no access road modifications will be required for fire access and they can thereby avoid the requirement to widen the driveway.

Applicants address comments by the Zeners raising safety concerns over the use of the portion of the driveway that serves as the driveway to access the Zener property. Applicants propose certain voluntary modifications to the driveay to address the Zener's concerns about cars passing and visibility. Specifically, Applicants propose to: 1) widen a portion of the driveway to allow two cars to pass on the hill where visibility is limited, and 2) reroute tasting room traffic to use an existing gravel access road through the vineyard on Parcel 2 instead of using the main driveway that serves the Zener and Parks residences.

There were many public comments submitted concerning traffic along this driveway and along SW Campbell Lane, particularly by the Parks' neighbors. I considered these statements, particularly the concerns expressed regarding cars speeding along the driveway to reach the Parks' property, and the safety hazard this creates to the neighborhood residents. I also considered the description by the Zeners of the annoyance of lost drivers coming down their driveway by mistake. I expect that, even with the changes to Google Maps giving correct direction to the Parks' property, this annoyance will not be completely eliminated. However, I find this additional measure will help reduce the annoyance to the Zeners of having the Parks' guests driving onto their property by mistake. I also find persuasive the argument by Applicants that providing a passing area on the hill will improve the safety of the driveway, helping to mitigate this part of the safety issue.

Lastly , I find persuasive the argument advanced by the Applicants that the County transportation engineer reviewed the access to the property from SW Campbell Lane that the existing right-of-way and roadway are adequate to support the proposed event use.

The Hearings Officer concurs in the finding by staff that this criterion can be met with conditions.

4. Section 1010 Standards, Signs:

The Applicant states temporary signage for the use will total less than three (3) square feet.

The Hearings Officer concurs in the finding by staff that the standards of Section 1010 can be met.

5. Section 1015, Parking and Loading

Staff report: Parking requirements are as required through this Section, and modified through Section 806 of the ZDO. These are essentially dimensional standards, objective and able to be conditioned. That said, the minimum parking space requirement for the home occupation shall be in addition to the parking required for other permitted uses on the subject property. The minimum parking requirement shall be one space per three guests based on the maximum number of guests permitted for any single event, in this case with a maximum of 120 guests a minimum of 40-spaces shall be provided for guests. An additional space shall be provided for each employee. Parking spaces shall meet minimum ZDO Section 1015 and Roadway Standards Drawing P100/P200 requirements. Parking spaces shall be adequately delineated. For paved surfaces, parking spaces shall be striped. For a gravel surface, tire stops or a similar physical feature shall be provided to delineate each gravel parking space. Applicant shows main parking area for those events totaling less than 50 guests, along with an overflow parking area for larger events.

The applicant shall provide a dimensioned site plan indicating each parking space and drive aisles. Handicapped (ADA) parking spaces and adjacent accessible areas shall be paved with asphalt concrete or an equivalent approved by Clackamas County Engineering staff, as required by the Building Department. ZDO 806.02(k)(2) allows the use of hardy grass or other soft surfaces for parking with consideration of season, duration and intensity of use as long as the parking is a minimum of 200 feet in length from the interior edge of the county road. The applicant has provide a plot map showing the proposed parking more than 1,100 lineal feet south of SW Campbell Rd. The applicant has proposed approved for events solely during the dry season in addition to the year-round events. Only parking for year-round events will be required to be on screened gravel or better. Therefore, 22 parking spaces may be provided in soft surface areas for dry season parking only. However, a minimum of 20 spaces (17 for guests and 3 for employees) are required to be on screened gravel or better surface

The applicant has proposed summer events with a maximum number of guests of 125 and year-around events with a maximum number of 50 guests. ZDO 1015 Table 1015-1 requires the applicant to provide a minimum of 1 parking space per 3 guests. Therefore, the applicant will be required to provide a minimum of 45 clearly delineated parking spaces to serve 125 guests and three employee parking spaces.

Applicants: The Applicants point to the review of this section by the County's transportation engineer evaluating their proposed parking plan and finding that Applicants' proposal can comply with the applicable parking and loading standards in this section, supporting a finding that these criteria can be met with certain proposed conditions of approval. Applicants review the requirements, and point to how they are able to meet these criteria.

Applicants also address comments by the Zeners regarding concerns over the location of their proposed parking in relation to the Zener property line, pointing to Attachment 3 and Attachment 4 as evidence that the two proposed parking areas nearest the Zener

property line are each limited to 5 parking spaces and are more than 10 feet from their property line, with parking areas the two other proposes parking areas located more than 50 feet and more than 100 feet, respectively, with their locations screened from view by the Zeners' own trees and improvements.

I reviewed and considered the photos and video evidence submitted by the Zeners showing the parking areas created by the Parks that are adjacent to their common property line. The photos and video show dozens of cars parked adjacent to the Zeners' property and along the shared driveway, and also dozens of cars parked in a nearby field giving it the appearance of a public parking lot area. I also noted the string of lights along their property line referenced by the Zeners that gives an impression that drivers are arriving at a public location rather than private property. I also reviewed and considered the site plans and related attachments provided by the Applicants and agree with their assertions that the changes made to the parking plans in their proposal will help lessen the impacts to their neighbors.

The Hearings Officer finds that these requirements can be met with conditions of approval.

6. Section 1021 Standards, Refuse and Recycling Standards for Commercial, Industrial, and Multifamily Developments: outlines the standards for refuse and recycling for commercial developments. The following requirements and standards of Section 1021 are applicable to this proposal.

Response here: "Applicant requests a modification to the requirements for commercial uses as Republic Sanitary does not provide commercial service to the property."

Staff Report: Staff suggests it is not unusual that the trash/recycling purveyor does not provide commercial service in an area not zoned for such use. Still, others with approved conditional use permits to Host Events have plans in place to deal with trash/recycling associated with the use. This should be a discussion item at hearing.

If approved, a condition should be added to have operator successfully address applicable portions of Section 1021.

I note that a related condition of approval was iproposed by staff and was not disputed by Applicants. I have reviewed the proposed condition of approval related to meeting the requirements of this section and find it sufficient to ensure these standards are met.

A Condition of Approval is warranted that: "Prior to final occupancy permit issuance: the applicant shall submit a plan showing satisfaction of requirements from Section 1021 of the Zoning and Development Ordinance, regarding trash/recycling. Detailed information, including ZDO 1021, is available on the county web site www.co.clackamas.or.us under "Garbage & Recycling".

Summary: The Hearings Officer concurs in the finding by staff that the Applicant can comply with all required sections listed under Section 1000.

PART 3. SECTION 806 HOME OCCUPATIONS TO HOST EVENTS

1. **Other Applicable Sections of the ZDO:** Other applicable standards and Sections of the ZDO applicable to this application are addressed below. **Many of these standards are requirements restated in the Conditions of Approval proposed in the staff report, or are met as stated, and are not otherwise discussed.**

- A. Section 407– AG/F Zone. Table 407-1 lists “*Home Occupation to Host Events, subject to Section 806*”. The applicant is proposing to host events on site.

The minimum yard depths in the AG/F zone are a minimum of:

30 feet from the front property line
30 feet from the side property lines
30 feet from the rear property line

As referenced above, these dimensional standards are less than those required for a winery.

- B. Section 806, Home Occupations to Host Events

- 1) 806.01 DEFINITIONS. The following definitions apply to Section 806:

- A. Employee: Any on-site person, whether they work full-time or part-time in the home occupation, including, but not limited to, the operator, partners, assistances, and any other persons participating in the operation of the home occupation. Except in the EFU, TBR, and AG/F districts, persons employed by contract to provided services for a single event, such as caterers, photographers, and florists, are not considered employees.
 - B. Event: A wedding, family reunion, class reunion, company picnic, or similar gathering.
 - C. Operator: The person who conducts the home occupation, has majority ownership interest in the home occupation, and is responsible for strategic decisions and day-to-day operations of the home occupation.

- 2) 806.02 STANDARDS

Home occupations to host events shall comply with the following standards:

- A. Operator: the operator shall reside full-time in a lawfully established dwelling unit on the tract on which the home occupation is located.

Staff Report: *The subject property represents a lot of record, with a residence in place. The applicant is owner/resident of the property.*

The Applicants reside full-time in a lawfully established dwelling on the subject property, and indicate they intend to operate their proposed home occupation. The Hearings Officer finds that this criterion is met.

B. Employees: The home occupation shall have no more than five employees.

Staff Report: *The definition of “Employee” under Section 806.02(A) is: “Any on-site person, whether they work full-time or part-time in the home occupation business, including, but not limited to, the operator, partners, assistants, and any other persons or family members participating in the operation of the home occupation. Except in the EFU, TBR, and AG/F Districts, this definition does not apply to persons employed by contract to provided services for a single event, such as caterers, photographers, and florists.”*

Applicants: *The Applicants state their home occupation will have no more than five employees.*

ZDO 806.01(A) defines “Employee” as: “Any on-site person, whether they work full-time or part-time in the home occupation, including, but not limited to, the operator, partners, assistants, and any other persons participating in the operation of the home occupation. Except in the EFU, TBR, and AG/F districts, persons employed by contract to provided services for a single event, such as caterers, photographers, and florists, are not considered employees.”

A plain reading of the definition of “employee” for a home occupation to host events on property within the AG/F zone, including Applicants’ property, requires including the “operator(s)” and essentially “any other persons participating in the operation of the home occupation” if they are on-site. This limitation means that, if both of the Parks are participating in the operation of the home occupation, they may only have up to three additional persons on-site participating in the operation of the home occupation. I note that the application discusses having musicians on-site. I find that “musicians” fall within the description of “persons employed by contract to provide services for a single event, such as caterers, photographers, and florists.”

A clarification to the condition of approval recommended by staff is warranted, adding the following: “Musicians, caterers, photographers, florists, and all other persons providing services for any single event must also be counted as “employees” when they are on-site.”

The Hearings Officer finds that, as conditioned, this criterion can be met.

C. Type of Buildings: Notwithstanding the definition of home occupation in Section 202, *Definitions*, in the AG/F, EFU, and TBR Districts, the home occupation shall be operated substantially in the operator’s dwelling or other buildings normally associated with uses permitted in the applicable zoning district.

The staff report references this section within a recommended condition of approval asserting that the restroom facilities proposed by Applicants are not allowed. The

application submitted by the Parks, subsequent information and evidence submitted by the Applicants and at the hearing, and Applicants' arguments that their proposed restroom facilities should be allowed, are reviewed in this section.

"Outdoor Restroom" Accessory Structure

Table 407-1, *Permitted Uses in the AG/F District*, lists the uses allowed in the AG/F district that includes the Applicants' property. Section 407.05 PROHIBITED USES further provides that: "A. Uses of structures and land not specifically permitted are prohibited."

Parcel 1 of the subject property is the 5-acre tract improved with the Applicants' dwelling and associated outbuildings. I find no dispute that the existing use of Parcel 1 is "Residential Use." Table 407-1 designates as "allowed" only two types of uses associated with existing "Residential Uses" as follows:

- 1) Uses and structures customarily accessory and incidental to a dwelling, only if a lawfully established dwelling exists.
- 2) Alteration, restoration, or replacement of a lawfully established dwelling.

The Applicants propose to build an approximately 200 SF accessory structure on Parcel 1, originally described as housing two bathrooms connected to septic and drainfield and a storage area. The sketch submitted with the application shows a 17' by 12' structure designated "Restroom Building." The County's staff report discussed this proposed outdoor restroom structure in a section on restroom facilities, asserting this is not a building normally associated with uses permitted in the AG/F zone. In addition to ZDO 806.02(C), staff cited ORS 215.448(1)(c)(B), ORS 215.448(3)⁶ and *Herkamp* (Z0540-16-C).⁷ The County recommended that, if the application were approved, a condition of approval require use of temporary toilets instead of this Restroom Building proposed by Applicants.

Applicants argue that staff provided no fact-specific analysis of Applicants' proposed restroom structure. Applicants make several arguments to distinguish the present proposal: Applicants assert that staff failed to distinguish the *Herkamp* proposal in the EFU zone from the Applicant's proposal involving AG/F-zoned property; that this proposal is different because it will share a septic system with another structure rather than be a "stand alone" system; that the *Herkamp* decision was based upon that specific case and a lack of substantial evidence to support a finding that the restroom structure involved was "accessory" to a dwelling; Applicants point to how their proposed 200 SF structure resembles the kind of small storage sheds or garden sheds commonly found on similar properties, and how it is common for such properties to have accessory structures; Applicants also point out that their proposed restroom building includes storage.

⁶ ORS 215.448(3) provides that "[n]othing in this section authorizes the governing body or its designate to permit construction of any structure that would not otherwise be allowed in the zone in which the home occupation is to be established."

⁷ See *1000 Friends of Oregon v. Clackamas County*, 309 Or App 499 (2021)
Hearings Officer Final Order
Z0444-21-C
Parks Event Hosting CUP

The *Herkamp* decision cited by Applicants and staff involved a decision by a hearings officer approving a restroom building in the EFU zone. The Oregon Court of Appeals⁸ found the hearings officer erred in approving the structure, stating:

“Although restrooms are a common component of modern dwellings, the new restroom building and its associated septic field are needed to provide ADA compliant restrooms and septic systems to accommodate up to 300 people at a time for a non-residential and non-agricultural use. There is no evidence to support a conclusion that the restroom building is accessory to the existing dwelling. Moreover, there is no evidence in the record that a free standing restroom with the septic capacity to serve 300 people per event is a structure or use customarily associated with a dwelling in the EFU land... [T]he restroom building is not accessory to a dwelling or a structure that applicant has shown would otherwise be allowed in the zone.”

Here, we have a similar issue: this proposal includes plans for a separate restroom building in the AG/F zone for property that has only an established residential use. Applicants argue that their proposed Restroom Building should be allowed as an accessory structure, asserting that accessory structures can be of varying nature and size so long as they are subordinate to the main building, pointing to the definition of “accessory structure” in ZDO 202. Applicants contend that:

“The fact that the proposed building has bathrooms does not in and of itself mean that it does not amount to a qualifying accessory building under ZSO 806.02(C). The Herkamp case did not rule that any accessory structure with bathrooms cannot be allowed under the ZDO 806.02(D). It was limited to looking at whether “this” restroom structure was accessory.”

In their final argument submitted in support of their proposal, Applicants propose to eliminate one of the bathrooms from the Restroom Building to limit the accessory structure to only one bathroom. It is Applicants’ position that having only *one* bathroom will make the proposed Restroom Building structure more similar to other accessory structures commonly permitted in the AG/F zone, citing “home offices, “she sheds”, art studios, and garden sheds.”

In order for the Restroom Building to be approved as an accessory building, the Restroom Building must meet the definition of an “accessory building” according to the ZDO Section 202 definition:

ACCESSORY BUILDING OR USE: A subordinate building or use, the function of which is clearly incidental to that of the main building or use on the same lot.

I agree with the assertion by Applicants that many different types of accessory structures commonly permitted and used on properties within the AG/F zone have bathrooms in them. A person might construct a home office, art studio, or “she shed”

⁸ See *1000 Friends of Oregon v. Clackamas County*, 309 Or App 499 (2021)
Hearings Officer Final Order
Z0444-21-C
Parks Event Hosting CUP

on their property incidental to their residential use, conducting associated activities in these buildings. (ie. a homeowner conducts their business from a separate home office or an artist utilizes an art studio on their property rather than a portion of their residence.) It is this additional *use* by a person with an existing residential use that makes such a building an *accessory structure*. Further, such an accessory structure might have a bathroom that *supports* that use. In the example of the home office, a person has a bathroom inside it to support their home office activities or *use*.

I do not see how the Restroom Building is in any way incidental to the residential use of the property associated with the Parks' lawfully established dwelling and associated *residential use*. The structure could be built as a storage building, as pointed out by Applicants, but how does a bathroom support that *storage use*? I do not find that including a storage area in the structure, or reducing it to one bathroom, makes it any more accessory or incidental to the Parks' dwelling, or any less like a public restroom facility, many of which have similar storage areas. Lastly, *there is no evidence in the record that a free standing Restroom Building is a structure or use customarily associated with a dwelling in the AG/F zone... [T]he restroom building is not accessory to a dwelling or a structure that applicant has shown would otherwise be allowed in the zone.* [Paraphrasing the referenced holding.] The Restroom Building is not allowed, but Applicants may use temporary toilets as meant by Section 806.

Barn Building to Host Events Accessory Structure

As discussed, Parcel 1 of the subject property is the 5-acre tract improved with the Applicants' dwelling and associated outbuildings, including the existing 890 SF barn that the Applicants propose to re-build as the 890 SF Barn Building to Host Events. In subsequent submittals, the Applicants refer to this proposed Barn Building to Host Events as the "barn/tasting room" and then simply as the "tasting room." As also discussed, the existing use of Parcel 1 is "Residential Use" and Table 407-1 designates as the only relevant "allowed" type of use: "Uses and structures customarily accessory and incidental to a dwelling, only if a lawfully established dwelling exists."

The Applicants have an 890 SF barn on their property that is an existing accessory structure presumably of the type customarily accessory and incidental to their existing dwelling within the AG/F zone. In their original application, the Applicants state: *"The proposed use will be operated on the premises of the Operator's dwelling and in a proposed building that is associated with uses permitted in the AG/F zone. Specifically, the proposed buildings include a barn storage type structure with restrooms and separate outdoor restroom building with two restrooms."* The original application included a sketch showing a proposed structure with the appearance of a steel barn or shop building or similar, with what appears four large garage-style doors, labeled the "Barn Building to Host Events." I find this sketch is of a barn or storage structure customarily accessory and incidental to dwellings located within the AG/F district within my experience and presume County staff did as well as they raised no issues about it.

I agree with Applicants' assertion that many different types of accessory structures commonly permitted and used on properties within the AG/F have bathrooms in

them, and these types of barns and storage structures are among them: people use such structures as workshops, and for farming or agriculturally-related uses, among other things, and sometimes put bathrooms in them to support that use. However, absent any evidence to the contrary, I expect such bathrooms are contained *inside* the structure, and not accessed directly through an exterior door. A building with doors leading directly to a bathroom gives it the appearance of a public restroom facility and would be out of place on private residential property.

The Applicants modified this description of the proposed replacement Barn Building to Host Events in their February 10, 2022 pre-hearing submittal, reducing the size of the proposed replacement accessory to 890 SF. (I understand this change as related to avoiding fire safety requirements that would require widening of the access to the property if the footprint of the original 890 SF barn were increased.) This change is not substantive and does not affect or alter the characterization of the proposed accessory structure as discussed.

At the hearing, the Applicants introduced for the first time a new drawing showing significant departure from their originally proposed Barn Building to Host Events drawing and description. The issue is whether this structure remains among the type of “buildings normally associated” with residential use in this zone. At first blush my impression was that the drawing does not at all resemble the Barn Building to Host Events shown in the application (or a “barn” at all) and this modification to the proposal should not be allowed. The depicted building appeared to me a “wine tasting room” that might be found on AG/F property with an existing winery use, as accessory and incidental to the winery. However, on second look at the rendering I was able to “see” the barn hidden within the details.



I considered the visual evidence of the above rendering and considered the characteristics described and discussed below in determining whether such a structure could be considered a “barn” or other building that it is customarily accessory or incidental to a dwelling and residential use within the AG/F district:

- The rendering depicts metal walls and a metal roof with a low pitch and gutters common to a barn or storage building customarily accessory and incidental to residential use. These features *can* be so modified and approved.
- The rendering depicts a concrete pad common to a barn or storage building customarily accessory and incidental to residential use. This feature *can* be so modified and approved.
- The rendering depicts all glass panels for the four garage-style doors. By contrast, a barn or storage building customarily accessory and incidental to residential use would typically have opaque doors, with perhaps a row of small glass panes to allow natural light. Nevertheless, although in my experience not typical for a barn, these are just doors that can be altered or replaced and do not affect the *function* of the doors as part of an accessory storage “barn” associated with residential use. This feature *can* be so modified and approved.
- The rendering depicts outside covered patio areas on each side of the structure creating adjacent outdoor covered patio or living areas. By contrast, a barn or storage building customarily accessory and incidental to residential use would not include any covered outdoor living spaces. However, these covered spaces could also be utilized as carports as part of an accessory storage building or barn associated with residential use. In my experience storage buildings often have carports. These features *can* be so modified and approved.
- The rendering depicts a large window and finished double-doors with large glass panes such as one would find more commonly on a dwelling. Still, a barn or storage building customarily accessory and incidental to residential use would typically have a side door and at least one window. These features *can* be so modified and approved.
- The rendering depicts several outside lighting fixtures in addition to perimeter security lighting. By contrast, a barn or storage building customarily accessory and incidental to residential use might have perimeter security lighting, and perhaps an entrance light by a doorway, but would not have such outside lighting fixtures. Nevertheless, these are just lights and do not affect the *use* of the structure as an accessory storage building or barn associated with residential use. (Compliance with lighting restrictions and conditions is still required.) These features *can* be so modified and approved.

To be clear: there is no actual winery on Parcel 1 and the permitted use of this property is residential. ORS 215.448(3) provides that “[n]othing in this section authorizes the governing body or its designate to permit construction of any structure that would not otherwise be allowed in the zone in which the home occupation is to be established.” Section 806.02.C. requires that the Parks’ home occupation to host events be operated substantially in buildings normally associated with their existing residential use of their property. This CUP does not authorize the Parks to build any

structure on their property that they could not otherwise build as customarily accessory and incidental to a dwelling located within the AG/F district.

A Barn Building to Host Events consistent with the Applicants' proposal and the discussion above, but not necessarily the rendering shown at the hearing or any of the changes proposed to the Barn Building to Host Events (which may have details I misunderstood) is allowed. I strongly recommend that Applicants work with staff in advance of finalizing the plans for their Barn Building to Host Events.

A Condition of Approval is warranted that: "This CUP does not permit construction of any structure not customarily accessory and incidental to a dwelling located within the AG/F district. A barn or similar accessory building as customarily accessory and incidental to a dwelling located within the AG/F district is approved."

The Hearings Officer finds that, with this condition, this criterion can be met.

D. Tents: Temporary tents are allowed as follows:

1. In the AG/F, EFU, and TBR Districts, temporary tents are permitted to the extent consistent with Subsection 806.02(C).
2. In a zoning district other than AG/F, EFU, and TBR, one temporary tent is permitted, and additional temporary tents may be permitted if consistent with Subsection 1203.03.
3. Temporary tents may be placed on the subject property not more than 24 hours before the event and must be removed no more than 24 hours after the event.

E. Impacts on Dwellings: In the AG/F, EFU, and TBR District, the evaluation of compliance with Subsection 1203.03(D) shall include consideration of impacts on dwellings even though dwellings are not primary uses in these zoning districts.

F. Hours of Operation: During the months of November through March, no event shall take place outside the hours of 9:00 a.m. to 10:00 p.m. During the months of April through October, no event shall take place outside the hours of 8:00 a.m. to 10:00 p.m. These time restrictions do not apply to persons involved in the set-up or clean-up of the facilities.

G. Frequency of Events: A maximum of two events shall be allowed per day, and no more than one event shall occur at any one time. During the months of November through March, no more than five events shall be allowed per week. During the months of April through October, no more than seven events shall be allowed per week.

Staff report: *Applicant proposes up to 170 events annually with up to 125 (150 max) guests per event. During the months of November through March, no more than five events shall be allowed per week. During the months of April through October, no more than seven events shall be allowed per week. A maximum of two events shall be allowed per day, and no more than one event shall occur at any one time.*

Staff recommended a condition stating: “A maximum of 170 events annually shall be allowed.”

The Applicants requested an amendment that would change this condition to state: “A maximum of 170 events annually shall be allowed with the majority of events being wine tasting events.”

Conflating the meaning of “Event.” Applicants initially submitted an application for land use approval for a winery. A winery is an allowed use in the AG/F zoning for the Applicants’ property.⁹ As alluded to by Mr. Glasgow at the hearing, ORS 215.452 Winery imposes certain dimensional standards including requiring: “Establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places...” As also pointed out by Mr. Glasgow, a winery appears a better fit for the Applicants’ activities than a home occupation to host events. Under ORS 215.452 Winery, in addition to producing and distributing wine a winery may directly market and sell wine from the property where the winery is located. A winery may also conduct operations directly related to the sale or marketing of wine, including: wine tastings in a tasting room or other locations on the premises occupied by the winery; wine club activities; wine-maker luncheons and dinners; winery and vineyard tours; carry out up to 18 days of agri-tourism¹⁰ or other commercial events on the tract occupied by the winery; and, host charitable activities for which the winery does not charge a facility fee. This description of an approved winery use fairly describes what Applicants are actually doing on their property. The uses of property allowed by a winery are very different from the uses of property allowed by a conditional use permit for a home occupation to host events. Nevertheless, as stated by Ms. Albrich at the hearing, “This is the path we are on.”

An “Event” within the meaning of Section 806 Home Occupations to Host Events is “A wedding, family reunion, class reunion, company picnic, or similar gathering.” Thus, “Event” has a specific meaning under Section 806. A conditional use permit under Section 806 allows the permit holder to use their property as a venue to host Events for these types of related groups. Such a permit does not allow the permit holder to generally hold their property open to the public as a commercial business, such as a winery or restaurant, publishing days and hours of operation when members of the public are invited or may make reservations. The Event is limited to the class of people in are members of a related group and their invited guests, similar to the class reunion in the provided example.

In their initial application the Parks seek approval to host “outdoor events, such as music, receptions, family reunions, class reunions, company picnics and other events, weddings, wine tastings, or other similar gatherings.” This response conflates the *meaning* of “Event” with an *activity* at an Event. “Music” is not an “Event” but may be provided at an “Event.” Similarly, and importantly to the Parks’ proposal, “wine tastings” are not “Events” but may be provided at an “Event.” In other words,

⁹ See Table 407-1 in ZDO Section 407.

¹⁰ ORS 215.452(14)(a)

approval of this application allows the Parks to use their property to host a wedding, family reunion, class reunion, company picnic, or similar gathering, and provide music and wine tasting at the Event. However, the Parks may not just make the activity generally available at their property without the “Event.” For this reason, I decline Applicant’s requested change to the proposed related condition of approval, as it would change the meaning of “Event” to specifically include the wine tasting activity as an “Event.”

Many of the activities the Parks describe in their proposal are therefore not allowable under this conditional use and would still be a land use violation. For example, the Seasonal Outdoor Commercial Events are described by Applicants as: “events where the sale and promotion of wine is not the primary focus and include but are not limited to events like ticketed farm to table dinners, fundraisers, food festivals and other lifestyle events, outdoor music, celebratory gatherings, and facility rentals.” The Parks may not simply schedule such activities as if they have an approved winery use and these are among their annual agri-tourism *events*.¹¹ By contrast, this conditional use would allow the Parks to host a charitable organization’s fundraiser Event on their property, and then *make music and wine tasting available at the Event*.

This conflation is an issue throughout this application. It affects the proposed “Tasting Room” and associated “tasting events” because the proposal implies the Tasting Room will be open to the public during posted seasonal days and hours, outside the scope of what this land use approval would allow. By contrast, it appears this conditional use *would* allow the Parks to host a *wine club* with the Parks making music and wine tasting available at the Event to members of the club and their invited guests.

Staff recommended this condition related to “Events”: “A maximum of 170 events annually shall be allowed.” Based on the above discussion, I find that a Condition of Approval is warranted clarifying the meaning of “Events” and re-stating the proposed condition to read: “A maximum of 170 Events annually shall be allowed. These Events shall be limited to weddings, family reunions, class reunions, company picnics, or similar gatherings consistent with the definition of “Event” in ZDO 806.01.B.” With this clarified condition, I find that the Parks *can* operate a Home Occupation to Host Events and this criterion *can* be met.

- H. Guests: The maximum number of guests for any single event is 300. However, to the extent necessary to comply with Subsection 1203.03, a lower limit may be imposed based on site capacity constraints.

Staff report: *The maximum number of guests for any single event shall not exceed 300. This criterion is met as proposed through this application.*

Applicants stated in their original application: “regular events on the subject property are planned for no more than fifty guests. Certain events, such as weddings

¹¹ The use of the term “events” has a different meaning in the context of a winery’s agri-tourism.)
Hearings Officer Final Order
Z0444-21-C
Parks Event Hosting CUP

or field dinners, which are limited to July and August, will have up to one-hundred twenty-five guests. No events are desired above one-hundred fifty guests.”

The Hearings Officer finds that, as conditioned, this criterion can be met.

I. Lighting: All lighting used during events shall comply with Subsection 1005.05(A).

Staff report: *All lighting used during events shall be arranged and shielded so as not to shine onto adjacent properties or rights-of-way. The applicants state that their lighting will not shine on neighboring properties, up or onto adjacent right-of-ways.*

The Hearings Officer finds that, as conditioned, these criteria can be met.

J. Noise: Noise shall be regulated as follows:

1. *From 7:00 a.m. until 10:00 p.m. on Friday and Saturday and until 9:00 p.m. on all other days of the week, the average peak sound pressure level, when measured off the subject property, of noise created by the home occupation shall not exceed the greater of 60 dB(A) or the ambient noise level. During all other hours, the average peak sound pressure level, when measure off the subject property, of noise created by the home occupation shall not exceed the greater of 50 dB(A) or the ambient noise level.*
 - a. *Noise generated by vehicles entering or exiting the subject property, but not by idling vehicles, shall be exempt from Subsection 806.02(J)(1).*
 - b. *Subsection 806.02(J)(1) shall not apply to noise detectable on public rights-of-way and railroad rights-of-way.*
2. A noise study may be required to demonstrate compliance with Subsection 806.04(J)(1). If a noise study is required, measurements shall be made with a sound level meter. The sound level meter shall be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standard 1.4-1971. The sound level meter shall contain at least an A-weighted scale, and both fast and slow meter response capability. Personnel making measurements shall have completed training in the use of the sound level meter, and measurement procedures consistent with that training shall be followed.

Staff report: Noise shall be regulated as required in Section 806.

Finding: Staff proposed a related condition of approval. The Hearings Officer finds that, as conditioned, this criterion can be met.

K. Parking: The home occupation shall comply with Section 1015, *Parking and Loading*, except as modified by Subsection 806.02(K).

1. On-street parking shall be prohibited on the day of an event.
2. An alternative to the parking area surface required pursuant to Subsection 1015.01(B) may be approved based on the following criteria:

- a. It is appropriate considering season, duration, and intensity of use.
- b. It shall be surfaced with hardy grasses, wood chips, or other similar organic materials sufficient to adequately stabilize the ground surface for parking.
- c. In order to minimize tracking of soil onto the roadway, a driveway surfaced with screened gravel or better must extend a minimum of 200 feet in length from the interior edge of the roadway that provides access to the subject property. A traffic management plan must direct all vehicular traffic along the required driveway prior to such traffic entering the roadway.

Staff report: *The minimum parking requirement shall be one space per three guests based on the maximum number of guests permitted for any single event. An additional space shall be provided for each employee. The minimum parking space requirement for the home occupation shall be in addition to the parking required for other permitted uses on the subject property.*

The Hearings Officer finds that, as conditioned, these criteria can be met.

L. Portable Restrooms: Portable restroom facilities shall:

1. Include hand-sanitizing or hand-washing facilities;
2. Comply with the standards of the service provider and the applicable regulations of the Oregon Department of Environmental Quality, as administered by the County Septic & Onsite Wastewater System Programs.
3. Portable restroom facilities shall be screened from adjacent properties and rights-of-way by sight-obscuring fences or plantings and shall be located a minimum of 50 feet from all lot lines.
4. Use of on-site sewage disposal facilities shall be subject to approval by Septic & Onsite Wastewater System Programs.

Staff report: The applicants are proposing to construct a restroom building on site. Recent decision in a similar hosting events application made the finding: “a proposed free-standing restroom building is not a “building[] normally associated with uses permitted in the [EFU] zone...” (ZDO 806.02.C and ORS 215.448(1)(c)(B)) or a “[s]tructure that would...otherwise be allowed in the [EFU] zone...” (ORS 215.448(3))(see Herkamp, Z0540-16-C).” While the subject property is not within the EFU Zone, staff finds the AG/F zone is a resource zone similar to the EFU Zone and as such the cited finding also applies in this situation. Permanent restroom structure such as proposed here is not allowed. Instead, and if this proposal is approved, portable facilities as meant by Section 806 shall be used. A proposed condition to this effect has been added.

The Hearings Officer finds that, as conditioned, this criterion can be met.

- M. Signs: One temporary sign shall be allowed in addition to signs permitted pursuant to Section 1010, *Signs*. The sign shall not exceed eight square feet in area; shall be placed on private property on the day of the event; shall be removed no more than 24 hours after the event; and shall be physically attached to the premises in a manner which both prevents the sign from being moved or blown from its location, and allows the prompt removal of the sign.

Staff report: The Applicants state that they will comply with the sign regulations. Temporary sign, not exceeding three (3) square feet, to be removed within 24 hours of each event.

The Hearings Officer finds that this criterion can be met.

- N. Storage: Equipment, furniture, goods, and other amenities used for events shall be stored indoors on non-event days.

Staff report: All Equipment, furniture, goods, and other amenities used for events will be stored in the barn or open on non-event days.

Finding: All equipment, furniture, goods, and other amenities used for events shall be stored indoors on non-event days. Applicants shall not store equipment, furniture, goods, or other amenities used for events in the open on non-event days.

The Hearings Officer finds that this criterion can be met.

- O. Appearance: On non-event days, the use shall not take an outward appearance nor manifest any characteristics of a business or operation of a service commercial nature, except for those characteristics normally associated with or allowed for a primary use in the subject zoning district, or, in the AG/F, EFU, and TBR Districts, for a use identified as “allowed” by Table 407-1, *Permitted Uses in the AG/F District*, 401-1, *Permitted Uses in the EFU District*, or 406-1, *Permitted Uses in the TBR District*, respectively.

Staff report: All Equipment, furniture, goods, and other amenities used for events will be stored in the barn or open on non-event days.

Finding: All equipment, furniture, goods, and other amenities used for events shall be stored indoors on non-event days. Applicants shall not store equipment, furniture, goods, or other amenities used for events in the open on non-event days.

The Hearings Officer finds this criterion can be met.

- p. Other: The use shall comply with any applicable requirements of the Oregon Liquor Control Commission.

The Applicants state that they and their clients will comply with OLCC’s regulations. The Hearings Officer finds this criterion can be met

The Hearings Officer concurs in the finding by staff that the applicable provisions from Section 806 can be met as described or can be conditioned.

D. DECISION

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer APPROVES application Z0444-21-C for a conditional use permit for a Home Occupation to Host Events on the subject property, subject to conditions of approval.

E. CONDITIONS OF APPROVAL

I reviewed and considered the proposed conditions of approval submitted by staff, and find these conditions designed to ensure that the requirements of this Conditional Use permit are met. I note that in its Pre-Hearing Submittal dated 2/10/2022 (Exhibit 53), Applicants state: "Applicants accept the conditions of approval as presented in Exhibit 6 in the record. Applicants commit to make the modifications to the proposal as described above. No additional condition language is proposed at this time but Applicants may suggest revised condition language before the close of the record." I also reviewed and considered the changes to the proposed conditions of approval suggested by Applicants in their Final Argument (Exhibit 61) submitted at the close of the open-record period, adopting those changes consistent with County requirements and recommendations by staff with respect to this proposal. I find the conditions proposed by staff, as modified herein, together with additional conditions required by the discussion above, sufficient. I note that failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval.

I. General Conditions:

- 1) This land use permit is based on the submitted written narrative and plan(s) dated 9/27/21. Following submission of additional information requested through incomplete notice, the application was deemed complete on 10/04/21. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.
- 2) The applicant is advised to take part in a Post Land Use Transition meeting. County staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you like to take advantage of this meeting please contact Wendi Coryell at (503) 742-4710 or at wendicor@co.clackamas.or.us
- 3) **Prior to the issuance of building permits**, the applicant shall submit a statement of use to Wendi Coryell in the Clackamas County Engineering Division. Wendi may be contacted at 503-742-4657, or <mailto:loriphi@co.clackamas.or.us> wendicor@co.clackamas.or.us The statement of use is used to calculate the Transportation System Development charge. A Transportation System Development Charge (TSDC) is included in the final calculation of the building permit fees for new instructional projects; this includes additions and tenant improvements that increase the number of daily trips to the site.

- 4) The conditional use approval is valid for four years from the date of the final written decision. If the County's final written decision is appealed and subsequently approved, the approval period shall commence on the date of the final appellate decision. During this four year period, the approval shall be implemented, or the approval will become void. "Implemented" means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A "major development permit" is:
 - a) A building permit for a new primary structure that was part of the conditional use approval; or
 - b) A permit issued by the County Engineering Division for parking lot or road improvements required by the conditional use approval.
- 5) This Conditional Use approval is granted subject to the above and below stated conditions. Failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval.
- 6) The approval of the application granted by this decision concerns only the applicable criteria for this decision. The decision does not include any conclusions by the county concerning whether the activities allowed will or will not come in conflict with the provisions of the federal Endangered Species Act (ESA). This decision should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsibility for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated and maintained in a manner that complies with the ESA.

II. Planning and Zoning Conditions: Clay Glasgow, (503) 742-4520, clayg@clackamas.co

- 1) Development of the subject property is subject to the provisions of ZDO Sec.1203 and those other relevant codes and ordinances adopted by the Board of County Commissioners pursuant to subsec. 1001.03 of the ZDO, including, but not limited to, the County Roadway Standards, County Excavation and Grading Ordinance, and Oregon Structural Specialty Code, etc.
- 2) Any outdoor lighting [ZDO 1005.05(A) and (B)] and 806.02(I) shall be located and designed so that it does not shine onto adjacent properties, upwards, or onto right-of-ways. *If additional lighting will be installed, the applicant will submit an outdoor lighting system design plan prior to installation of the outdoor lighting system for review and approval by Planning and Zoning Division.* **Applicants requested deletion of this italicized language. I find the language related to the requirement that the home occupation continue to maintain the appearance of a residential property when Events are not taking place. I also noted this statement in the original application reviewed by staff: "The applicant will submit lighting plans in compliance with Section 1005.05(A) and (B) when CU is approved."**

- 3) All signs shall be in compliance with ZDO Section 1010.06 and 1010.13. One temporary sign shall be allowed in addition to signs permitted pursuant to Section 1010.07. The sign shall not exceed eight square feet in area; shall be placed on private property on the day of the event; shall be removed no more than 24 hours after the event; and shall be physically attached to the premises in a manner which both prevents the sign from being moved or blown from its location, and allows the prompt removal of the sign.
- 4) **Prior to final occupancy permit issuance:** the applicant shall submit a plan showing satisfaction of requirements from Section 1021 of the Zoning and Development Ordinance, regarding trash/recycling. Detailed information, including ZDO 1021, is available on the county web site www.co.clackamas.or.us under “Garbage & Recycling.”
- 5) **Prior to final occupancy permit issuance:** The applicant shall obtain all County Health Department Licenses and comply with County Health Department regulations.
- 6) **Prior to final occupancy permit issuance:** The applicant shall obtain any applicable OLCC Licenses and comply with OLCC regulations.
- 7) The operator of the home occupation shall be a resident of the property on which the home occupation is located.
- 8) The home occupation shall have no more than five full-time or part-time employees on site. **Musicians, caterers, photographers, florists, and all other persons providing services for any single Event must also be counted as “employees” when they are on-site.**
- 9) During the months of **October** through **late-May**, no Event shall take place outside the hours of 9:00 a.m. to 10:00 p.m. During the months of **late-May** through **September**, no Event shall take place outside the hours of 8:00 a.m. to 10:00 p.m. These time restrictions do not apply to persons involved in the set-up or clean-up of the facilities.
- 10) During the months of **October** through **late-May**, no more than five Events shall be allowed per week. During the months of **late-May** through **September**, no more than seven Events shall be allowed per week.
- 11) **A maximum of 170 Events annually shall be allowed. These Events shall be limited to weddings, family reunions, class reunions, company picnics, or similar gatherings consistent with the definition of “Event” in ZDO 806.01.B.**
- 12) The maximum number of guests for any single Event shall not exceed **125**.
- 13) Noise shall be regulated as follows:
 - A. From 7:00 a.m. until 10:00 p.m. on Friday and Saturday and until 9:00 p.m. on all other days of the week, the average peak sound pressure level of the noise shall not exceed the greater of 60 dB(A) or the ambient noise level when measured off the subject property. During all other hours, the average peak sound pressure level of the noise shall not exceed the greater of 50 dB(A) or the ambient noise level when measured off the subject property.

- i. Noise generated by vehicles entering or exiting the subject property, but not by idling vehicles, shall be exempt from Subsection 806.03(N)(1).
 - ii. Subsection 806.03(N)(1) shall not apply to noise detectable on public rights-of-way and railroad rights-of-way.
- 14) The proposed free-standing restroom building is not a “building normally associated with uses permitted in the [AG/F] zone...” (ZDO 806.02.C and ORS 215.448(1)(c)(B)) or a “[s]tructure that would...otherwise be allowed in the [AG/F] zone...” (ORS 215.448(3))(see also Herkamp, Z0540-16-C) . Temporary toilets as meant by Section 806 shall be used. Restroom facilities shall be as follows:
 - A. Portable restroom facilities shall be used and include hand-sanitizing or hand-washing facilities.
 - B. Portable restroom facilities shall be subject to the standards of the service provider and the County Septic & Onsite Wastewater System Programs.
 - C. Portable restroom facilities shall be screened from adjacent properties and rights-of-way by sight-obscuring fences or plantings and shall be located a minimum of 50 feet from all lot lines.

Applicants request deletion of this condition of approval. As discussed, I agree with the County’s finding that the restroom building proposed by Applicants is not allowed.

- 15) “Prior to final occupancy permit issuance: the applicant shall submit a plan showing satisfaction of requirements from Section 1021 of the Zoning and Development Ordinance, regarding trash/recycling. Detailed information, including ZDO 1021, is available on the county web site www.co.clackamas.or.us under “Garbage & Recycling”.
- 16) **The home occupation shall be operated substantially in building(s) normally associated with uses permitted in the AG/F zone.**
- 17) **All equipment, furniture, goods, and other amenities used for Events shall be stored indoors on non-Event days. Applicants shall not store equipment, furniture, goods, or other amenities used for Events in the open on non-Event days.**

III. Building Code Division Conditions: Richard Carlson, (503) 742-4769, richardcar@co.clackamas.or.us
General Conditions:

- 1) All construction activities, and all changes of use (occupancy type), shall comply with applicable Oregon Specialty Codes and local ordinances. All such codes and ordinances apply to all such activities, even when permits and inspections are not required.
- 2) Compliance with the following conditions is required prior to the commencement of any new use or occupancy:

- a. All necessary development permits (septic, building, electrical, grading, driveways, etc.) for the property, facility, and associated buildings shall be obtained.
- b. The plans must meet the minimum structural integrity and life safety requirements of the applicable Oregon Specialty Codes.
- c. Any additional information required by the Building Codes Division, such as engineering, details, and specifications, must be provided to the Plans Examiner reviewing the project.
- d. All necessary permits and approved plans must be issued and maintained onsite as required.
- e. All required inspections, corrections, and final approval must be obtained.
- f. **This CUP does not permit construction of any structure not customarily accessory and incidental to a dwelling located within the AG/F district. A barn or similar accessory building as customarily accessory and incidental to a dwelling located within the AG/F district is approved.**

IV. Engineering Division Conditions: Jonny Gish, (503 804-8271, jgish@clackamas.us)

A) Overview:

- i. The following items are project requirements from the Department of Transportation and Development's Development Engineering Division. These conditions of approval are not intended to include every engineering requirement necessary for the successful completion of this project, but are provided to illustrate to the applicant specific details regarding the required improvements that may prove helpful in determining the cost and scope of the project. These conditions are based upon the requirements detailed in the County's Comprehensive Plan (Comp Plan), the County's Zoning and Development Ordinance (ZDO) and the County's Roadway Standards. Additional requirements beyond those stated in the conditions of approval may be required once plans have been submitted and reviewed. The applicant may discuss the requirements of the project with staff at any time.

The requirements specifically required by the Comprehensive Plan and the ZDO cannot be modified by the Development Engineering Division. However, the requirements detailed in these conditions of approval, derived from the County Roadway Standards, are based upon nationally accepted standards and engineering judgment and may be modified pursuant to Section 170 of the Roadway Standards. The applicant is required to provide sufficient justification to staff in the request. Staff shall determine if a modification is warranted.

General Provisions:

ii. **Prior to Certificate of Occupancy**

- a. The applicant shall obtain a Development Permit from the Engineering Department for review and approval of parking, onsite access and circulation and erosion control best management practices. The permit shall be obtained prior to commencement of site work and Certificate of Occupancy. To obtain the permit, the applicant shall submit construction plans prepared and stamped by an Engineer registered in the State of Oregon, or plans acceptable to the

Engineering Division and pay a plan review and inspection fee. The fee will be calculated as a percentage of the construction costs if it exceeds the minimum permit fee. The minimum fee and the percentage will be determined by the current fee structure at the time of the Development Permit Application.

Approved Plans shall include:

- i. Written approval from the Fire Marshal for emergency access and circulation of the private access. If greater than 150 feet, a fire apparatus turnaround at or near the end of the shared private roadway will be required, per Standard Drawing C350 at a location approved by Clackamas Fire and Engineering staff.
- ii. Number of parking spaces provided and required shall be labeled for the amount of approved guest during dry season and wet season. Dry season parking may be placed on hardy grass or other approved soft surface. Wet season parking shall be on screened gravel or better. Each parking space shall be clearly delineated with a wheel stop with dimensions meeting standard detail P100 or P200.
- iii. All existing and proposed private access drives and wet season parking shall meet standard detail R100 for drive widths and structural section.
- iv. The applicant will be required to provide a minimum of one ADA complaint parking space and access to all building accesses. If a building permit is required or obtained, all ADA compliance shall be permitted and inspected through the building department.

Dated: April 4, 2022



Carl D. Cox
Clackamas County Hearings Officer

APPEAL RIGHTS

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision is "final" for purposes of a LUBA appeal as of the date of the decision appearing by my signature.