

**BEFORE THE LAND USE HEARINGS OFFICER
OF CLACKAMAS COUNTY, OREGON**

Regarding an application by Devyn Petersen and Staci Dalton for approval of a CUP to operate a home occupation to host weddings and events on a 19.6-acre parcel at 29335 S. Beaver Creek Road in Clackamas County, Oregon) **ORDER RE-OPENING
THE RECORD
Case No. Z0123-23-C
(Sage and Social)**

A. SUBJECT

1. The applicants, Devyn Petersen and Staci Dalton, request approval of a Conditional Use Permit (“CUP”) to operate a home occupation to host weddings and other events.

a. The applicants propose to locate the facility on a 19.6-acre parcel located at 29335 S. Beaver Creek Road; also known as tax lot 608, Section 27, Township 4 South, Range 3 East, of the Willamette Meridian, in Clackamas County (the “site”). The site and all abutting properties are zoned AG/F (Agriculture/Forest). S. Beaver Creek Road abuts the south boundary of the site. A private driveway provides access to the residence on site. The site is currently developed with a single-family residence and a 3,000 square foot ag-exempt barn with a covered patio on the west side (the “barn”). The barn and residence are located in the northern portion of the site. The remainder of the site is used for agriculture, nine-acres of Christmas trees¹ on the east side of the site and a one-acre flower farm on the west side, south of the event venue.

b. The applicants propose to conduct up to 36 events per year with a maximum 150 and an average of 100 guests per event. The applicants initially proposed to conduct events in the existing barn and a proposed 1,400 square foot building with two bathrooms with showers, a kitchen, and bride and groom changing rooms (the “dressing” building). The applicants proposed to locate the dressing building north of the barn with a 40- x 60-foot concrete surfaced outdoor gathering area in between. The applicants also propose an outdoor ceremony area southwest of the barn, two storage containers, a temporary food truck parking space, a 70 space parking lot, and roughly three-acres of landscaping. The applicants propose to plant a hedge between the outdoor ceremony area and the storage containers and parking lot. Additional overflow parking is proposed in an 80- x 40-foot gravel surfaced area north of the house and east of the dressing building. Applicants propose to conduct event management and business operations in the existing residence.

c. County staff initially recommended the hearings officer approve the original application subject to conditions. See the Staff Report to the Hearings Officer dated July 6, 2023 (Exhibit 1, the “Staff Report”). Staff subsequently changed their recommendation to denial, arguing that since the existing barn on the site was approved as an agricultural building that is exempt from building code compliance, ORS 215.760(2) prohibits the conversion of an agricultural building to another use. See the Addendum to the Staff Report to the Hearings Officer dated December 6, 2023 (Exhibit 12, the “Addendum”).

¹ The majority of the Christmas trees have been removed from the site. (Exhibits 11, The applicant proposes to plant pumpkins on the site in 2024. (Exhibit 34).

The applicant modified the application in response to the Addendum, proposing, as an alternative, to construct a new 2,400 square foot accessory structure similar to the existing barn, located north of the proposed parking lot and southwest of the existing barn (the "reception building"). In addition, the applicant proposed to hold events in an 800 square foot temporary tent while the new barn is under construction. (Exhibit 34). Staff recommended the hearings officer approve the alternative proposal subject to conditions. See the County's "Response To New Evidence Following The Open-Record Period." (Exhibit 47).

2. Clackamas County Hearings Officer Joe Turner (the "hearings officer") held two public hearings about this application. No testimony was offered at the first hearing, other than the applicants' request to continue the hearing. At the second hearing the applicants', their attorney, and three other persons testified orally in support of the application testified in support of the application. Three other persons testified orally in opposition to the application. Other persons testified in writing, in opposition and in support of the proposal.

3. At the conclusion of the second public hearing, the hearings officer ordered the record held open for two weeks for new evidence from all parties; for a third week for all parties to respond to the whatever was submitted during the first weeks; and for fourth week for the applicants to submit a final argument.

4. During the open record period, the County submitted evidence regarding the crash history on the section of S. Beaver Creek Road southwest of the site. However, neither the County nor the applicant directly addressed how that crash history data affects the "[s]afety of the transportation system..." and whether it is "[a]dequate to serve the proposed use." ZDO 1203.03(C). Therefore, the hearings officer is reopening the record in this case solely for the limited purpose of allowing all parties an opportunity to provide additional testimony and evidence addressing the crash data and transportation safety.

B. DISCUSSION

1. Under ZDO 1303.03.F, every party is entitled to an opportunity to be heard and present and rebut evidence. Nothing in the ZDO precludes keeping the record open after the public hearing, provided the public has an opportunity to respond in writing to any new evidence the applicant introduces.

2. The hearings officer finds that reopening the record to allow all parties to address this issue is warranted to serve the interests of a full and fair understanding of the relevant law, provided the process affords the public a meaningful opportunity to respond to that new evidence.

3. During the open record period the County submitted Exhibit 46, ODOT crash data for the section of S. Beaver Creek Road between mileposts 1.1 and 1.5, near the intersection of Beaver Creek Road and Valley Vista Road. That data shows that seven crashes were reported on this roadway segment during the five year period between 2017

and 2021; six injury crashes and one property damage only crash.² The County traffic engineer determined that this “[d]ata indicates an elevated crash risk and elevated crash severity on this segment. The primary crash type is lane departure.” (p. 3 of Exhibit 47). The proposed use will add traffic to this roadway segment, increasing the risk of accidents. Absent some analysis of the impact of the additional traffic on this road segment the hearings officer cannot find that the application complies with ZDO 1203.03(C).

4. The County proposed to “[a]ssess the roadway geometry and corresponding curve warning signs on this section of Beaver Creek Rd. Where opportunities for improvements exist, we will upgrade signing and delineation.” (p. 3 of Exhibit 47). However, that is not sufficient to support a finding that the proposed assessment and signage will ensure that the “[s]afety of the transportation system is adequate to serve the proposed use.” ZDO 1203.03(C). Neither the applicant nor the County addressed this safety issue based on the ODOT crash data.

5. Whether the cost of mitigating this existing issue is roughly proportional to the impact of the proposed use is irrelevant to whether the application complies with ZDO 1203.03(C). The County cannot require the applicant to remedy this hazard, because the cost of the improvements would exceed the roughly proportional impact of this development on the need for these improvements. But the County can deny the application pursuant to ZDO 1203.03(C) if traffic generated by the proposed use would create or exacerbate a transportation safety hazard.

6. The hearings officer finds that reopening the record to allow all parties an opportunity to submit additional testimony and evidence on this issue is warranted to serve the interests of a full and fair understanding of the relevant law, provided the process affords the public a meaningful opportunity to respond to that new evidence. Therefore, the hearings officer will reopen the record solely for the purpose of accepting additional testimony and evidence on the issue of whether the “[s]afety of the transportation system is adequate to serve the proposed use.” ZDO 1203.03(C). No other issues may be raised or addressed during the open record period.

C. ORDER

1. The hearings officer orders the public record to be reopened in the matter of Case No. Z0123-23-C (Sage and Social), subject to the following schedule:

a. For two weeks, until 3:00 p.m. Friday, February 2, 2024, for all parties to introduce new evidence and testimony addressing the issue of whether the “[s]afety of the transportation system is adequate to serve the proposed use.” ZDO 1203.03(C).

² County staff state that “there have been seven (7) accidents that caused injury and one (1) accident that involved property damage only from the years 2017 to 2021.” (p. 2 of Exhibit 47). However, Exhibit 46 appears to show a total of seven accidents; six injury and one property damage only.

b. For a third week, until 3:00 P.M., Friday, February 9, 2024 for all parties to respond in writing to the new evidence; and

c. For a fourth week, until 3:00 P.M., Friday, February 16, 2024, for the applicant to submit a final argument without introducing any new evidence

2. Any new evidence and testimony must be in writing and must be received by the Department of Transportation and Development by 3:00 P.M. of the relevant closing date.

3. As soon as practicable, Clackamas County shall mail a copy of this Order to all persons who are parties in this matter.

4. The hearings officer will issue a written final order within ten (10) working days after the close of the record (i.e., by February 23, 2024).

DATED this 18th day of January 2024.

A handwritten signature in black ink, appearing to read 'Joe Turner', is written over a horizontal line.

Joe Turner, AICP
Clackamas County Hearings Officer