

**County of Yakima, Washington  
Office of the Hearing Examiner**

<b>In the Matter of the Application Submitted</b>	)	<b>File No. CUP2021-00054</b>
<b>by:</b>	)	
	)	
<b>Ron Pelson on behalf of Wes Teslo and</b>	)	
<b>Natasha Dremlyuga</b>	)	
	)	
<b>For:</b>	)	
<b>A Resort Agricultural Tourist Operation, a</b>	)	<b>Hearing Examiner Recommendation</b>
<b>Type 4 Conditional Use Permit in the</b>	)	
<b>Agriculture zone at the southeast corner of</b>	)	
<b>the intersection of Purple Lane and Knight</b>	)	
<b>Hill Road, approximately 1 mile northwest</b>	)	
<b>of the City of Zillah</b>	)	
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**I. INTRODUCTION**

Ron Pelson of Traditional Designs, Inc. filed an application for a Resort Agricultural Tourist Operation on behalf of the operators of J. Bell Cellars winery, which is located on the subject property. The property is located a mile northwest of the City of Zillah. The application seeks to change the current land use to a Resort ATO (Agricultural Tourist Operation) that would include a lounge/private club area, restaurant, multi-use/event space, events/weddings, classes, lavender distillery, hard liquor distillery, wellness cottages, and overnight cabins.

An open record hearing on the application was convened on June 2, 2022, at the Yakima County Courthouse. The Hearing Examiner viewed the property on the same date. The Hearing Examiner was provided with a staff report and a set of hearing exhibits prior to the hearing. Planner Phil Hoge presented the staff report at the hearing. Mr. Pelson represented the operators/owners. Several members of the public provided comment at the hearing. The comments raised concerns about traffic in the vicinity, particularly the use of Eiler Road as part of operations.

The Staff Report recommended approval of the Resort ATO subject to conditions, except with respect to the installation of cabins for overnight stays on the property due to the potential for cabin sites to inconsistent with protection of agricultural production on AG-zoned land as provided in special property use provisions of the county code applicable to Resort ATOs. The overnight cabins were not recommended by the Planning Division for approval because they

are argued to not be “located within the general area already developed for buildings and residential uses” (YCC 19.18.060(3)(g) and YCC 19.18.060(7)(a)(iv)). The applicant objected to the recommended denial of the overnight cabin element of the application. Because of the necessity for a legal interpretation of the special property use language, the applicant was invited to provide briefing on the appropriate interpretation, and the Planning Division was invited to respond in writing.

## **II. SUMMARY OF RECOMMENDATION**

Because the application to establish a Resort ATO is supported by evidence allowing favorable consideration of the application under the Unified Land Development Code (ULDC) 19.30.080(7) and 19.18.060, the Hearing Examiner recommends APPROVAL of Ron Pelson’s application on behalf of Wes Teslo and Natasha Dremlyuga SUBJECT TO CONDITIONS TO ASSURE COMPLIANCE WITH THE YAKIMA COUNTY COMPREHENSIVE PLAN – HORIZON 2040 AND PERTINENT DEVELOPMENT CRITERIA, STANDARDS AND REGULATION. Those conditions, including conditions related to the location of overnight cabins, are set out in Section V below.

## **III. FINDINGS**

Based on the application, comments received during the comment period and at the hearing, and a review of the pertinent provisions of *Horizon 2040* (the Yakima County Growth Management Plan) and the Yakima County Code (including the Unified Land Development Code, Title 19 YCC), the Hearing Examiner makes the Findings set out in this Section III. Any finding more properly determined to be a conclusion is deemed to be such.

### **1. PROPERTY INFORMATION:**

Project Name:	J. Bell Resort Agricultural Tourist Operation
Zoning Designation:	Agriculture (AG)
Future Land Use Designation:	Agricultural Resource
Subject Parcel Numbers:	201116-43016 & 201116-42011
Property Acreage:	11.97 & 17.66 acres
Property Location:	124 Purple Lane
Property Owner (201116-43016):	Valley Investments LLC 124 Purple Lane, Zillah, WA 98953
Property Owner (201116-42011):	Vasily Teslo 124 Purple Lane, Zillah, WA 98953
Applicant/Agent:	Ron Pelson, Traditional Designs Inc. 106 S. 4 <sup>th</sup> Ave, Yakima, WA 98902

### **2. PROPERTY DESCRIPTION:**

The southern parcel (201116-43016), lying south of Purple Lane, is generally flat except along the south and southwest edge, which is a downward sloping bluff. Current uses and structures are a lavender farm, a pear orchard, a lavender still, a house, a chicken coop, a wine storage/tasting/sales room, restrooms, a 280 sq. ft. stage, a pizza oven, outdoor seating area, a developed serving well a Group B water system, and 30 parking spaces. The parcel also contains a half-built event/multi-use building. Access to the southern parcel is from Purple Lane.

The northern parcel (201116-42011), lying north of Purple Lane, is also generally flat and has a house and agricultural use. Access to the northern parcel is from both Purple Lane and Eiler Road.

### **3. PROJECT DESCRIPTION:**

The Staff Report describes the project as follows (based on the narrative provided by the applicant):

Winery: An expanded tasting room would have a lounge (private club area), restaurant setting overlapping space between tasting & restaurant. They will both have public and private area and events. The tasting room would host classes like wine & paint nights, wine tasting, food and wine pairing class with restaurant. The facility would participate in local winery-based events such as Spring Barrell, Red Wine & Chocolate. Club area will be serviced by restaurant and may have special menu.

Restaurant: Using tasting space, outside space & event space. At this time will be weekends and some evenings in the Summer. Future plans may be everyday (years down the line). Catering and providing food for all other events going on. Cooking class, wine & food pairing events & classes. Classes will most likely be on weekdays or early in the day on weekends.

Cabins space: Want to provide 25 small private cabins with bathrooms 600-800 [sq. ft.] about spaces in pear orchard. To provide lodging when doing a weekend farmers market, wedding, and lavender farm weekend (experiments). 1 parking space at each cabin will be provided.

Septic system: Septic and reserve area are provided in the existing lawn area north of the stage and will also be provided, as needed, for the restaurant and cabins on the adjacent parcel lying north of Purple Lane. An easement on this parcel for such system will be established.

Water System: The plan was to use the existing class "B" well that has been there before 2018 up to its allowed maximum per day of 5000 gallons. If the engineer working on the class "A" upgrade says we will exceed the 5000 gallons per day, we will either scale back what we are doing or buy water rights or work with Yakima County on a YCWRS metering as needed.

Lavender Farm: Lavender field existing. Educational tours & classes on essential oil. Walking tours may have wine & snacks coordinated into them. Distilling of lavender on site to oil, making of soap & other lavender/herb-based products. Want to do little wellness cottages to provide massages & other spa like services with lavender oil & products produced on site. Wellness cottages will also be used as changing rooms for weddings, not overnight use. Bees on site for lavender pollination & lavender honey (may also be used by restaurant). Gazebo to be used for classes, maybe outdoor massages.

Distillery: Someday add a distillery for the pair to make hard liquor small tasting room maybe. The liquor will be used by restaurant for drinks and cooking.

Events/Weddings: These will use or overlap with restaurant and winery (will primarily use grass field), lavender farm area. We would think there would be an event every weekend Spring through Fall, weather permitted. Maybe some mid-week company events & the like. Gazebo & wellness cottages will be used when there is a wedding.

Event definition: A group of over 50 people coming for an advertised special activity, public or private.

Class definition: A scheduled time for 25 people or less for educational experience.

New or existing structures to be used as part of this proposal: New event space half built, new distillery, gazebo, wellness cottages, and cabin[s]. Most have been covered in more detail previously. The tasting room & restaurant are already there, just expanding & formalizing what they are doing now.

How the proposed use will be pertinent to the proposed/existing structures: This is needed for small operation to add value to their produce to make small farm feasible. If things like this cannot happen will only have mega farm or AG land with house not being really farmed.

Describe parking facilities, landscaping, signage, and lighting: There is existing 31 parking spaces including 2 ADA van spaces on concrete pad with ADA path to tasting room & restroom. Seating around existing pear trees. Built light strung in trees & between trees makes for a fun & beautiful setting.

Describe access to the property: The property is located off Knight Rd & Purple Ln, just outside of Buena proper.

Describe the travel ways located onsite: Only will be the parking area and the orchard road to the cabins.

Describe the timelines for completion of proposal:

- The event building/multi-use building will be first, club area at winery, then the wellness cottages, gazebo, cabins, distillery. Note, we see this as a 10-year plan, maybe faster depending on money. We would like to request this is good for this time frame as long as we have listed the item, any changes or additions will need a modification done.
- Timeline: as we see it right now note this is subject to change:
  - The first thing to get done will be the event/multi-use building, restaurant, club area, then as money provides cabins (about 5) to start, and wellness cottage. We hope this can all get done with in the first 3 years.
  - Then over the next 7 years work on adding the remaining cabins, distillery, second wellness cottage, gazebo, and anything that did not get done in the first 3 year.
  - Note: the order of things will likely change as this will be market driven. IE if the cabins are doing well will build more cabins fast, but if they are not doing well, we may never finish all the cabins. If there is a demand to do the distillery that many move up.

Hours of operation:

- TASTING ROOM & FUTURE DISTILLERY WILL BE THE SAME
  - Monday Hours - Current 11-5, Future 11-5
  - Tuesday Hours - Closed 11-5, Future 11-5
  - Wednesday Hours - Closed, 11-5 Future 11-5
  - Thursday Hours - Current 11-5 Future 11-5
  - Friday Hours - Current 11-5, Future 11-5
  - Saturday Hours - Current 11-5, Future 11-5
  - Sunday Hours - Current 11-5, Future 11-5
- RESTAURANT
  - Monday Hours - Current closed, Future 4-8
  - Tuesday Hours - Current closed, Future 4-8
  - Wednesday Hours - Current closed, Future 4-8
  - Thursday Hours - Current closed, Future 4-8
  - Friday Hours - Current 4-8, Future 10
  - Saturday Hours - Current 11-8, Future 11-10
  - Sunday Hours - Current 12:30- 5:30, Future 12:30-8:00
- SPECIAL EVENT CENTER
  - Thursday future 4-10
  - Friday future 12-10
  - Saturday future 11-10
  - Sunday future 12-8

- WELLNESS COTTAGES BY APPOINTMENT ONLY
  - Monday future hours 11-5
  - Tuesday future hours 11-5
  - Wednesday future hours 11-5
  - Thursday future hours 11-5
  - Friday future hours 11-5
  - Saturday future hours 11-5
  - Sunday future hours 11-5

#### **4. ZONING AND COMPREHENSIVE PLAN DESIGNATION:**

The site is within the Agriculture (AG) zoning district, and within the Agricultural Resource designation of the Yakima County Comprehensive Plan (*Horizon 2040*).

There are 20 properties surrounding the site and all are zoned AG. They range in size from 0.23 acres to 42.59 acres and average 6.87 acres. South of the site, at the bottom of the bluff, are the five smallest lots, which all contain residential structures. The lots to the east, north, and west are larger with agricultural uses and single-family homes.

#### **5. HEARING EXAMINER JURISDICTION:**

The proposal is subject to YCC Title 19 (Unified Land Development Code). Table 19.14-1 (Allowable Land Uses) designates a Resort ATO as requiring Type 4 review in the AG zoning district. Type 4 applications are quasi-judicial actions which require an open record hearing before the Hearing Examiner. The Examiner's written decision constitutes a recommendation to the Board of County Commissioners. The Board then conducts a closed record hearing to consider the Examiner's recommendation and issue the decision.

#### **6. NOTICE OF APPLICATION:**

After the application was submitted, comments from internal agencies were requested electronically through the County's permit tracking application. A combined Notice of Application, Notice of Completeness, Notice of Environmental Review, and Notice of Future Hearing was mailed to adjoining property owners and agencies on November 19, 2021, with a 14-day comment period ending on December 3, 2021. A Notice of Open Record Public Hearing and Preliminary Threshold Determination (DNS) was mailed to adjoining property owners and agencies on May 6, 2022, and published on May 11, 2022, with a 14-day comment period ending on May 20, 2022. In accordance with YCC 16B, the open record hearing notice was posted on the property on May 18, 2022. A notice of the Final Threshold Determination (DNS) and Open Record Public Hearing was mailed to adjoining property owners and agencies on May 26, 2022.

## 7. COMMENTS:

In addition to the public comment received at the hearing, comments were received from six internal divisions and from two external agencies and are summarized below.

- a. Code Enforcement Division: A code case currently exists on the property, which is being resolved by and in conjunction with this Resort ATO application. Approval of the Resort ATO will be subject to resolving the code case on the property. All permits for the new improvements must be obtained, and work inspected and approved prior to use of the expansion.
- b. Building Division: Based upon the preliminary site plan received for the Conditional Use Permit application, all new structures and modifications to existing structures require building permits. [Specific compliance issues identified in comments included]
- BLD2014-00553 & FCP2014-00179 Conversion to Winery Need Reinstatement and final inspection
  - BLD2016-00198 & FCP2016-00080 Bathrooms - never issued, needs new permits and final inspection
  - DEM2021-00117 Needs final inspection
  - FCP221-00117 Propane tank -Needs final inspection
  - FCP2021-00134 Outside wood stove (pizza oven) needs final inspection.

All work will be required to comply with all applicable provisions of the current adopted building codes based upon use of the structures. All construction is required to comply with all applicable provisions of the adopted International Building Codes and Washington State Commercial Energy Code. All buildings are required to be fully accessible to individuals with disabilities. A more complete building plan review will be performed during the code compliance plan review. If discrepancies are discovered a plan review document will be produced for each building reviewed for code compliance.

- c. County Fire Marshal: Fire apparatus access requirements have been met.
- Must meet fire apparatus access requirements including but not limited to width, turnouts, turnarounds, all weather surface and grade of no greater than 10%. (Ordinance 503.1, Appendix D of the International Fire Code). Fire Flow [shall] be required (Ordinance and International Fire Code 507.3, Appendix B of the International Fire Code).
  - An automatic fire sprinkler system may be required.
  - A monitored fire alarm may be required.
  - If there is cooking with grease laden vapors a commercial type 1 hood with fire suppression will be required.
  - All buildings will need to obtain proper building and fire safety permits. If food vendors are to be on site, they must have their mobile food preparation permit from Yakima County.
  - If tents are to be used for events, then a tent permit shall be obtained from Yakima County.

- Other requirements may be determined after a full fire plan review has taken place.
- d. County Roads: Property is served by a privately maintained roadway and not subject to any county road mitigation.
- A full TIA is not necessary.
- e. County Water Resources Division: A stormwater plan is not required. Ongoing conditions:
- Stormwater must be retained on site.
  - Any natural drainageways must not be altered or impeded.
  - Upland drainage, if any, must be conveyed through the property in accordance with criteria found at YCC 12.10.250.
- f. Yakima Health District: Items necessary for proposed expansions:
- Convert the well to a Group A public water system,
  - The septic system will need to be able to serve the entire restaurant, and
  - The restaurant will need a new food service establishment license.
- g. Department of Ecology:
- Toxics Clean-up. The site may be contaminated with lead and/or arsenic due to the possible application of legacy pesticides. The project is required to conduct soil sampling under the Model Toxics Control Act (Chapter 173-340 WAC).
  - Water Quality. The applicant may need to obtain coverage under Ecology's Winery General Permit and/or NPDES Construction Stormwater General Permit.
  - Water Resources. The applicant must obtain Ecology's authorization before diverting surface water or withdrawing groundwater unless usage meets the one exemption.
- h. Public comments at hearing: Several comments were offered regarding concerns about impacts to Eiler Road based on the inclusion of Parcel 201116-42011 and related road maintenance requirements.

## **8. ENVIRONMENTAL REVIEW:**

The Yakima County SEPA Responsible Official conducted a review of the application under the provisions of the State Environmental Policy Act under County File Number SEP2021-00042. A Final Determination of Non-Significance (DNS) was issued on May 26, 2022. Threshold Determinations for Type 4 Permit Applications are not subject to administrative appeal under YCC 16B.03.030, Table 3-1. The Threshold Determination may be appealed under the Land Use Petition Act (RCW 36.70C) after the Board of County Commissioners issues their decision on the Conditional Use application.

## 9. REVIEW CRITERIA AND APPLICATION TO THE PROPOSAL:

The Hearing Examiner is required to prepare written findings and conclusions stating the specific reasons upon which a recommendation to approve, approve with conditions or deny the application is based. The findings must, at a minimum, address the decision criteria provided in YCC 19.30.080(7), which are set out below and analyzed in turn.:

- a. *The present and future needs of the community will be adequately served by the proposed development and the community as a whole will be benefited rather than injured.*

*Horizon 2040* establishes a goal of expanding the county's tourism- and recreation-related economy while discouraging incompatible development in resource areas. The implementing development regulations (Title 19 YCC) establish that Resort ATOs are permitted in the AG zone through Type 4 review, subject to appropriate conditions and limitations.

- b. *The proposed use is compatible with neighborhood land uses, the goals, objectives and policies of the Comprehensive Plan, and the legislative intent of the zoning district.*

Compatibility with neighborhood land uses. Several public comments were offered regarding concerns about impacts to Eiler Road based on the inclusion of Parcel 201116-42011 and related road maintenance requirements. However, Eiler Road will not be used as access to the Resort ATO, and the parcel in question is not proposed to be used except in the event that additional acreage is needed to meet on-site septic system requirements associated with the expansion as determined by the Yakima Health District. No evidence has been presented for the record that indicates any incompatibility of the proposed uses with neighborhood land uses so long as Eiler Road is not used to access the facilities, and no other public comment pertinent to the expansion has been offered.

### Compatibility with *Horizon 2040* goals, objectives and policies.

Several *Horizon 2040* Goals and Policies pertain to a Resort ATO. These goals and policies support tourism in general and agriculturally based tourism in particular, including allowing agricultural and non-agricultural accessory uses that support, promote, or sustain agriculture. The Yakima County Unified Development Code Title 19 protects these lands with the AG Zoning District.<sup>1</sup>

- (1) The following goal and its policies recognize the importance of a viable agricultural economy and encourage the preservation of these important resources.

- GOAL ED 4: Preserve and enhance the County's resource-based economy.
- POLICY ED 4.1 Encourage resource-based industries which are consistent with resource lands goals and policies.

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<sup>1</sup> *Horizon 2040* (2017) at 5|51.

- POLICY ED 4.4 Discourage incompatible development in resource areas.

(2) The following goal and its related policy support the County's tourism expansion.

- GOAL ED 5: Expand the County's tourism- and recreation-related economy.
- POLICY ED 5.1 Support the development of programs, activities and facilities which increase tourism and recreation opportunities in Yakima County.

(3) The intent of the following goal and policies is to protect the County's agricultural base by establishing a minimum parcel size and by limiting segregations, and to protect farmers from nuisance complaints and lawsuits.

- GOAL LU-ER-AG 1: Maintain and enhance productive agricultural lands and discourage uses that are incompatible with farming activities.
- POLICY LU-ER-AG 1.1 Encourage conservation of the County's high quality agricultural lands for productive agricultural use and protect the opportunity for these lands to support the widest variety of agricultural crops.
- POLICY LU-ER-AG 1.5 Allow for accessory uses, including non-agricultural accessory uses that support, promote, or sustain agricultural operations and production. Such accessory uses may include bed & breakfasts, boarding houses, restaurants, event facilities and other amenities that are determined to support agriculturally related entrepreneurial efforts.

When considering the pertinent goals and policies as a whole, bed & breakfasts, boarding houses, restaurants, event facilities and other amenities that are determined to support agriculturally related entrepreneurial efforts are viewed in *Horizon 2040* as compatible with agricultural resource land protection so long as such accessory uses comply with Title 19 YCC.

Compatibility with the legislative intent of the zoning district. The purpose of the Agriculture (AG) district includes preserving and maintaining areas for the continued practice of agriculture by permitting only those new uses that are compatible with agricultural activities, protection of agricultural lands of long-term commercial significance, and providing measures to separate especially sensitive land uses from customary and innovative agricultural land management practices. The AG district implements the Comprehensive Plan that calls for the preservation of agricultural lands. YCC 19.11.010(1)(b). Given the allowances in *Horizon 2040* Policy LU-ER-AG 1.5 for accessory uses that support agricultural production, so long as the proposed use supports agricultural production, it is compatible with the intent of the AG zone.

c. *The site of the proposed use is adequate in size and shape to accommodate the proposed use.*

Generally, the site is of adequate size to accommodate the proposed development based on the site plan, although the installation of overnight stay cabins would require taking a portion of the existing pear orchard out of production.

- d. *All setbacks, spaces, walls and fences, parking, loading, sitescreening, landscaping and other features required by [Title 19 YCC].*

The proposal meets this criterion. See section “10. YCC 19.10.040 General Development Regulations” below for a full review.

- e. *The proposed use complies with other development and performance standards of the zoning district and this Title.*

The proposal meets this criterion subject to conditions. See section “10. YCC 19.10.040 General Development Regulations” below for a full review.

- f. *The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use.*

The proposal meets this criterion. Knight Hill Road, a hard-surface county-maintained road, provides access to the site. The County Roads Division indicated no concerns as to its adequacy.

- g. *The proposed use will have no substantial adverse effect on abutting property or the permitted use thereof.*

So long as the project is approached by Purple Lane off of Knight Hill Road, there is no evidence in the record of a substantial adverse effect on abutting property.

- h. *The development complies with all criteria in Chapter 19.18 applicable to the proposed use, unless otherwise administratively adjusted.*

Resort ATOs are governed by YCC 19.18.060 and RCW 36.70A.177. Those ordinance and statutory sections provide specific standards for ATOs as a category of use and for Resort ATOs in particular. The County has the authority to limit or exclude accessory uses otherwise authorized under RCW 36.70A.177 (3) in areas designated as agricultural lands of long-term commercial significance. Generally, lands in Yakima County zoned Agriculture can be considered resource lands of long-term commercial significance. *Horizon 2040* at 5|51. All types of ATOs shall:

(1) *Be consistent with the intent of this YCC 19.18.060;*

An ATO is considered to be an agricultural accessory use and a component of a strong agricultural economy. Section 19.18.060 YCC provides standards to ensure that the physical development of tourist operations and public education in farming areas enables business

diversification that supports, promotes and sustains agricultural operations and production. The proposed J Bell Cellars Resort ATO reflects a diversification that supports the continued viability of agricultural production on the property. At hearing, Mr. Pelson noted that the current pear production would have limited commercial viability without the revenues provided by the other business activities on the property. However, a key consideration is that operation that does not interfere with, and supports the continuation of, the overall agricultural use of the property and neighboring properties. This issue is addressed in III.9.h(3), below.

(2) *Be operated by the owner, operator, or occupant of the farming use;*

The owners of record of the subject parcels are Wasily Teslo and Valley Investments LLC. Valley Investments LLC acquired title to the principle project property through a quitclaim deed from Natasha Dremlyuga. Therefore, the Resort ATO must be operated under authority of Valley Investments LLC or such other entity that is authorized to farm the orchard and lavender rows as a condition of approval.

(3) *Comply with specific provisions applicable to Resort ATOs in YCC 19.18.060(6);*

*Event Facilities:* The code section allows Resort ATO to have event facilities of unlimited size as long as nonagricultural accessory uses and activities (including new buildings) are located within the general area already developed for buildings and residential uses and the development of the event facilities do not otherwise convert more than one acre of agricultural land to nonagricultural uses. The proposed new event/multi-use building would occupy less than an acre and is proposed to be located near the area already developed for the existing winery, existing house, and existing septic area.

*Restaurant:* The code section also allows a restaurant as an accessory use to the Resort ATO and open to the general public, subject to Yakima Health District requirements and Title 13 YCC standards. The applicant proposes such a restaurant. In addition, the applicant proposes a distillery at some point to provide liquor for drinks and cooking at the restaurant. The distillery would be located in an area currently encompassed by the pear orchard according to the site plan, but adjacent to the currently developed parking area. Accordingly, while the distillery is conceptually consistent with the purpose of non-agricultural accessory uses as provided in YCC 19.18.060 and RCW 36.70A.177, its actual development would require a determination that, cumulatively with other new development under this application, no more than 1 acre of agricultural land would be converted to non-agricultural use.

*Commercial uses:* Commercial uses directly related to the ATO, such as the proposed events/weddings, massage, and education classes associated with agricultural production processing and marketing, are also allowed under YCC 19.18.060(6).

*Overnight Lodging Facilities:* An unlimited number of accessory overnight lodging facilities are allowed at Resort ATOs as long as they and their permanent parking are located and

designed so they will: 1) not interfere with agricultural operations on the site or on nearby properties, and 2) are located within the general area already developed for buildings and residential uses, and 3) do not convert more than one acre of agricultural land to nonagricultural uses. YCC 19.18.060(7)(a)(iv).

(a) The site plan indicates that the proposed 25 overnight cabins and their parking spaces, as well as an extension of the interior driveway serving the cabins, would be interspersed within the pear orchard. It is difficult to see how the interspersal would not physically interfere with typical orchard operations and the applicant has not offered evidence indicating that the interspersal would not physically interfere with orchard operations. The staff report did not specifically address the issue of interference due to its emphasis concerns with the cabins not being located in the general area already developed on the property. While the cabin site plan might be economically beneficial to the applicant, the plan must also not interfere with agricultural production on the land per the provisions and purposes of YCC 19.18.060 and must be reflected in the site plan and narrative.

(b) The meaning of the reference to the “general area already developed” in the ordinance has been a matter of dispute in the administrative review of the proposal. The applicant relies on other earlier County land use decisions that addressed proximity to developed areas in terms of physical distance and compares the distance of the proposed cabins from the existing buildings to earlier decisions’ distance-based determinations. County planners contend that the decisions identified by the applicant were made under a different zoning ordinance are not simply not relevant. The language in appears to be borrowed directly from RCW 36.70A.177, which is specifically mentioned in YCC 19.18.060(1). Section 36.70A.177(3)B(ii) RCW allows for nonagricultural accessory uses and activities

[as] long as they are consistent with the size, scale, and intensity of the existing agricultural use of the property and the existing buildings on the site. Nonagricultural accessory uses and activities, including new buildings, parking, or supportive uses, shall not be located outside the general area already developed for buildings and residential uses.

Language in legislative enactments such as ordinances is to be given its plain meaning. Plain meaning is derived from what the enactments say, but that meaning is discerned from *all* that the legislative body has said in the ordinance and related statutes and ordinances which disclose legislative intent about the provision in question. See, e.g. *Dept. of Ecology v. Campbell & Gwinn*, 43 P.3d 4, 10, 146 Wn.2d 1 (Wash. 2002). RCW 36.70A.177 removed an earlier statutory requirement that accessory uses be functionally related to the growing of crops or raising of animals and replacing it with a more general standard requiring that such uses support the continuation of the agricultural use of the property and neighboring properties.<sup>2</sup> As noted, the ordinance overall is intended to assure that physical development of tourist operations and public education in farming areas enables business diversification

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<sup>2</sup> See the Final Bill Report for SHB 2917 from the 2005-2006 legislative session.

that supports, promotes and sustains agricultural operations and production. The purpose of the general area reference must be construed consistent with sustaining agricultural operations. Interspersion of nonagricultural uses such as the proposed cabins and parking rather than locating them in or adjacent to areas “already developed for buildings and residential uses” is not consistent with either the statutory objectives or the intent of the ordinance. Reading the provisions of the ordinance related to physical non-interference of the development with agricultural production with the requirement related to the general area of existing non-crop development indicates that the current cabin site plan does not meet this criterion.

(c) The area of the footprint of the cabins and parking, together with other new development, does not appear to convert more than an acre of land to nonagricultural use. However, if the practical effect of the site plan is to interfere with agricultural practices around the cabins and parking, the cumulative effect would potentially exceed the 1-acre limitation.

*(4) Be subject to, and limited by the appropriate licensing standards of the Yakima Health District where food handling is required;*

As noted, the Yakima Health District commented that for proposed expansions the applicant is required to convert the existing system well to a Group A public water system. The septic system will need to be able to serve the entire restaurant and the restaurant will need a new food service establishment license. The applicant is responsible for working with the Yakima Health District to receive these necessary items. To assure compliance with this requirement, approval of the Resort ATO is appropriately conditioned on the applicant providing to the Planning Official copies of documentation evidencing Yakima Health District approval. The commercial kitchen is also subject to health district regulations.

*(5) Be located on a farm consisting of one or more contiguous parcels with at least five producing acres in the crops used in the retail product;*

As noted above, current RCW 36.70A.177 removed a requirement that accessory uses be functionally related to the growing of crops or raising of animals. The County is authorized to provide for greater limitations on development on AG-zoned land, but this general requirement for ATOs is not applicable to Resort ATOs.

*(6) Locate and design the ATO accessory facilities and permanent parking so they will not interfere with agricultural operations on the site of the proposed use or on nearby properties;*

Other than as regards the portion of the site plan addressing the cabins and parking, the site plan submitted with the proposal uses the same parking areas as were permitted in 2013 when the site’s winery was approved. The new event/multi-use building proposed for the Resort ATO would be located near the existing winery and existing house and appear not to interfere with agricultural operations on the site or on nearby properties.

*(7) Not locate nonagricultural accessory uses and activities, including new buildings, parking or supportive uses, outside the general area already developed for buildings and residential uses and shall not otherwise convert more than one acre of agricultural land to nonagricultural uses;*

This general requirement was addressed in the context of III.9.h(3) above.

*(8) Have adequate access from a county road consistent with the standards under Chapter 19.23. ATOs that share a private road must submit a road maintenance agreement at the time of application signed by all legal property owners or their designees. Without the road maintenance agreement, the application will be considered incomplete;*

The subject site accesses Knight Hill Road (a public, county-maintained, hard surface road) via Purple Lane, which is an existing, privately-owned, privately maintained gravel road. The County Roads Division indicated that the property is served by a privately maintained roadway and not subject to any county road mitigation. Based upon these comments, Purple Lane is presumed able to support the traffic that would be generated by the proposal. The applicants have submitted a road maintenance agreement for Purple Lane.

*(9) Provide sufficient detail with applications proposing phased development of an ATO to enable the County, agencies and adjoining property owners to consider all aspects of the project at full build-out. Changes to an approved ATO that result in new uses that were not considered in the original approval are subject to the level of review for the requested change.*

The applicants have described the full build-out of the Resort ATO and propose to build the various components over 10 years. Within the first three years they plan to finish the event/multi-use building, restaurant, club area, about five overnight cabins, and a wellness cottage. Over the following seven years the remaining components will be built, including the remaining cabins, distillery, second wellness cottage, and gazebo. The development of the various items will be market-driven, and therefore the order of finishing each one may change.

## **10. APPLICATION OF YCC 19.10.040 GENERAL DEVELOPMENT REGULATIONS**

The development standards that generally apply for the type of project being proposed are as follows:

- a. *Conformity with All Regulations Required: (YCC 19.10.040(1)) "Any development, structure, or part shall conform to all of the regulations specified in this Title for the situation and zoning district in which they are located in order to be authorized, erected, constructed, reconstructed, moved or structurally altered."*

The proposed Resort ATO shall comply with the standards of the AG zoning district and the development standards of YCC 19.10.040 and YCC 19.18.060.

- b. *Yards, Lots, Open Space and Off-Street Parking and Loading Spaces: (YCC 19.10.040(2)(a)) "Yards or lots created after the effective date of this Title shall meet at least the minimum requirements established by this Title and shall not be smaller than the minimum standards established in Chapters 19.10 through 19.18. The lot size, width, depth, shape and orientation shall be in accordance with the applicable zoning laws."*

No lots or yards are being created or modified. The existing parking areas have 30 spaces, 16 of which were required by the permit issued in 2013 for the wine storage and wine tasting and sales room (CUP2013-00012). The Resort ATO application indicates that the area of the proposed event/multiuse building will be 2080 sq. ft. This proposed building will be used for the proposed restaurant, which will require nine additional parking spaces (Table 19.22-2 Off-Street Parking Standards requires one parking space per 250 sq. ft. of floor area.). The previous and proposed uses will therefore require a minimum of 25 parking spaces (16+9=25). The existing 30 parking spaces will accommodate the 25 parking spaces required for the Resort ATO.

- c. *Access Required: (YCC 19.10.040(3)) "All new development shall have a minimum of 20 feet of lot frontage upon a public road or be served by an access easement conforming to the dimensional requirements of Sections 19.23.040 and 19.23.050 to provide for access to the development. The approach location shall be reviewed by the County Engineer for compliance with YCC Chapter 10.08. Approach connections to other public roads are subject to review by the applicable agency. Verification of legal access and a valid road approach permit shall be required prior to final approval of any permit granted under this Title."*

The primary parcel on which the Resort ATO will be located has a minimum of 20 feet of frontage on Knight Hill Road. The existing privately maintained roadway, now named Purple Lane, is located along the northern edge of this parcel and along the southern edge of the adjacent parcels to the north and has existed for many decades.

- d. *Land Uses: (YCC 19.10.040(4)) "Uses allowed within a zoning district are listed as permitted, administrative or conditional uses in the Allowable Land Uses Table 19.14-1 within Chapter 19.14."*

A Resort ATO is listed in the Allowable Land Use Table 19.14-1, as a Type 4 review process in the AG zoning district.

- e. *Building and Fire Safety Permits Required: (YCC 19.10.040(5)) "No building or other structure shall be erected, moved, added to or structurally altered without a permit issued by the Building Official under RCW 19.27 and YCC Title 13. No building permit shall be issued except in conformity with this Title."*

Several previous Building and Fire Safety Permits were never finalized and need final inspections, reinstatements, and/or reissuance. Also needed are new building permit(s) to resolve a code case. Approval of this Resort ATO will enable such permits to be issued following applicable permitting procedures. The applicants shall obtain all necessary Building and Fire Safety Division permits relevant to this proposal prior to the occupancy and/or use of any structures.

- f. *Setbacks, Easements and Right-of-Way: (YCC 19.10.040(6)) "Chapters 19.11 through 19.18 list standard minimum setbacks for buildings or other structures and uses. Exceptions to certain setbacks are listed in Subsection 19.10.040(6)(b)..."*

Table 19.11.010-2 (Setbacks, Lot Coverage and Building Height) under YCC 19.11.010 lists the standard minimum setback of buildings or other structures and uses in the AG zoning district. The addition of the event/multi-use building will be required to meet the setbacks in Table 19.11.010-2. The site plan indicates that the setbacks will be met.

- g. *Vision Clearance Triangles at Intersections and Driveways: (YCC 19.10.040(7)) "A vision clearance triangle shall be maintained at all driveways and curbcuts, and the intersection of an alley with a public street for vision and safety purposes. The vision clearance triangle shall measure 15 feet along the perpendicular street curb lines or pavement edge, or travel lane of the public street and 15 feet along the driveway or alley. The third side of the triangle shall be a straight line connecting the 15-foot sides described above. No sign or associated landscaping shall be placed within this triangle so as to materially impede vision between the heights of two and one-half and ten feet above the centerline grade of the streets."*

The Resort ATO is required to meet the vision clearance triangles and the site plan indicates compliance.

- h. *Maximum Lot Coverage and Building Height: (Table 19.11.010-2 and YCC 19.10.040(8)(a)).*

According to Table 19.11.010-2, the maximum lot coverage and building height in the AG zoning district are not specified.

- i. *Fences, Walls and Recreational Screens: (YCC 19.10.040(9))*

The applicants are not proposing any new fences, walls, or recreational screens.

- j. *Exterior Lighting: (YCC 19.10.040(10)) "Exterior lighting is regulated to minimize light pollution to neighboring properties and encourage true-color, full-spectrum light rendition in projects. Exterior lighting for all uses and signs shall be directed downward and otherwise arranged, fully shaded, screened, shielded, and of a design that results in the light being directed onto the site and of an intensity or brightness that does not reflect or cause glare or light intrusion into any adjacent or nearby residential use or interfere with the safe operation of motor vehicles."*

The applicants are proposing ambient lighting in outdoor seating areas and lights on the stage. Such lighting and any future new exterior lighting are required to comply with the standards set forth in YCC 19.10.040(10).

- k. *Floodplain Development: (YCC 19.10.040(11)) "A pre-application meeting and a Flood Hazard Permit application is required for all new development in floodplains in order to minimize and mitigate potential adverse impacts to property and infrastructure while reducing risks to public health and safety."*

The Building Division advised that the entire parcel is outside the 100-year floodplain/floodway and that no additional flood resistant materials and construction methods are required.

- l. *Stormwater Requirements: YCC 19.10.040(12) "is intended to ensure public and private development projects comply with the National Pollution Discharge Elimination System (NPDES) permit requirements under the Federal Clean Water Act (CWA) where applicable."*

Per Yakima County Water Resources comments, stormwater must be retained on site, any natural drainageways must not be altered or impeded, and upland drainage, if any, must be conveyed through the property in accordance with criteria found at YCC 12.10.250.

- m. *YCC 19.20.030—Signs. "All on-premises signs are accessory uses and shall be subject to the same procedural and review requirements as the principal use, except that new signs accessory to existing or approved uses may be reviewed as modifications to existing or approved uses under Section 19.35.030."*

All proposed signs are subject to the review procedures of Title 19 and the standards of Chapter 19.20, which include Table 19.20-1 Type of Signs Permitted, Table 19.20-2 Number of Signs Permitted, Table 19.20-3 Maximum Area per Sign Face, and Table 19.20-4 Sign Height and Setbacks. The applicants are proposing one freestanding sign along the frontage of Knight Hill Road that is 4 ft. by 5 ft. (height, width), with 7 ft. being the total height of the sign from grade to top. Such a sign, as long as it does not extend into the county's road right-of-way, meets the standards of YCC 19.20. The sign is currently existing on the site, but the applicants are not sure it ever received a permit. The sign can be approved, subject to any Building permit that is required by YCC Title 13.

- n. *YCC 19.21 Sitescreening and Landscaping:*

Chapter 19.21 YCC does not require sitescreening or landscaping within the AG zoning district.

- o. *Parking and Loading- YCC 19.22.020, No off-street parking or loading spaces shall be placed, constructed, located, relocated or modified after adoption of Title 19 YCC without first receiving a development permit from the Reviewing Official.*

The existing permitted parking areas meet the requirements of YCC 19.22 for the proposed Resort ATO, other than the overnight cabins, subject to any requirements for additional accessible parking under YCC Title 13. Accessibility information is available from the Yakima County Public Services Department Building and Fire Safety Division.

- p. *Transportation and Circulation YCC 19.23.050(6)(b): Any existing private road serving development shall be retained permanently as a private road, located within non-exclusive access easements, and maintained privately[.] Covenants providing for the perpetual maintenance of the private road shall be required. The covenants shall be signed by the owners, according to the records of the office of the County Auditor of property to an aggregate amount of the majority of the lineal frontage upon the improvement required and of the area within the boundaries of the properties served by the road. Said covenants shall establish a road maintenance fund and require the owners in the development to pay into such fund. Covenants shall be approved by the County and recorded by the developer with a copy of the recorded document provided to the Planning Division. Private road name signs shall be provided by the developer at the intersections of private roads with private roads and at the intersection of private roads with public roads. The property owners shall be responsible for maintaining private roads and the signs within private roads. Private roads shall be open and unobstructed for use by emergency, public service and utility vehicles.*

Approval of the Resort ATO will be subject to the above requirements of YCC 19.23.050(6)(b). The applicant has submitted a road maintenance agreement and is required to record it with the County Auditor.

- q. *YCC 19.25 Sewer and Water According to YCC Table 19.25-1 and YCC Table 19.25-2, new structures in the AG zoning district require connection to either an existing public water system or an individual well and to either a County sewer system or an individual on-site septic system.*

Per Yakima Health District comments, the applicant will be required to convert the well to a Group A public water system, the septic system will need to be able to serve the entire restaurant, the restaurant will need a new food service establishment license. Septic systems will be required to serve any allowed overnight cabin facilities. The applicants propose to convert their Group B well to Group A and use it for their water source. This conversion will need to be approved by the Department of Health; and verification of that approval must be submitted to the Planning Official prior to issuance of building permits. If their engineer working on the update to Group A determines that usage would exceed the exempt amount of 5,000 gallons per day, they will either scale back what they are doing or buy water rights or procure water through Yakima County's Water Resource System. The applicants propose septic systems for sewage disposal. If needed they will use the grass field area on their northern parcel (201116-42011) to accommodate any enlarged or additional septic systems. The applicant shall obtain all necessary Yakima Health District permits relevant to this proposal prior to the occupancy and/or use of any structures. Please contact Yakima Health District's Environmental Help Desk at 509-249-6508.

**11. CONSISTENCY ANALYSIS (YCC 16B.06.020):**

As part of project review, the reviewing official will determine if a proposed project is consistent with Yakima County's applicable development regulations or, in the absence of applicable regulations, the adopted Yakima County Comprehensive Plan. Consistency should be determined in the project review process by considering four factors found in applicable plans and regulations (RCW 36.70B.040). They are as follows:

- a. The type of land use;
- b. The level of development, such as units per acre or other measures of density.
- c. Infrastructure, including public facilities and services needed to serve the development;
- d. The characteristics of the development, such as development standards.

These factors are all addressed through application of the review criteria applied in III.9 and III.10, above.

**IV. CONCLUSIONS**

1. The application materials and received comments include evidence and analysis that supports a conclusion that the proposed Land Use, if appropriately conditioned, is consistent with YCC 19.18.060 (Ag Tourist Operations) and the general development standards in Title 19 YCC. The proposed plan for 25 cabins are inconsistent with YCC 19.18.060(3)(g) and YCC 19.18.060(7)(a)(iv) as current set out in the site plan. The site plan must be reconfigured to locate any cabins within or immediately adjacent to areas currently developed and in a manner that does not interfere with current agricultural production activities. Such reconfiguration of the cabin sites shall, taken together with other new development under this application, not convert more than 1 acre of agricultural land to nonagricultural uses.

2. Except, as otherwise expressly provided, a Reviewing Official is authorized by YCC 19.30.100 to impose conditions on an approval to assure compliance with Title 19 YCC and other relevant provisions of Yakima County Code. This recommendation contains a set of proposed conditions that largely serve this purpose. Any approval should include those conditions, subject to adjustment based on the results of the open record hearing. Similarly, conditions that mitigate for material impacts identified in the Findings should also be included in the approval.

3. The Findings above and these Conclusions support a recommendation for approval of the J Bell Resort ATO, so long as the necessary changes are made to the site plan.

## V. RECOMMENDATION

Based on the findings, analysis, and conclusions above, the Hearing Examiner recommends approval of the application by Wes Teslo and Natasha Dremlyuga to establish the proposed Resort Agricultural Tourist Operation. The ATO will consist of the restaurant, event/multi-use building, various and the commercial and educational activities as described in application CUP2021-00054/SEP2021-00042, and such overnight cabins as can be developed consistently with the provisions of YCC 19.18.060 as described herein, subject to the following conditions:

The following conditions must be obtained within three years of the date of the decision. Note that the decision and time limit pertains to conditional authorization for the subject land use only and failure to comply with all conditions will result in the revocation of this permit. The Final Decision should include the following conditions and the findings as described.

1. The landowners of record must provide written certification of the authority of the developer or operator to develop the project on the subject property to the Yakima County Planning Official.

2. The applicants shall obtain all permits required by the Building and Fire Safety Division to close the code case prior to the ATO becoming effective.

3. The applicants shall obtain all permits required by the Building and Fire Safety Division prior to the occupancy and/or use of any structure. Prior to issuance of building permits for buildings using potable water, the applicants shall submit verification to the Planning Official of Department of Health's approval of the well's conversion from Group B to Group A.

4. The applicants shall apply for any required building permit for their proposed sign.

5. The applicants shall retain all stormwater on site.

6. The applicants shall not alter or impede any natural drainageways. Upland drainage, if any, must be conveyed through the property in accordance with criteria found at YCC 12.10.250.

7. The applicants shall: 1) comply with the requirements of the Yakima Health District (YHD) for upgrading the water system to a Group A system, for accommodating septic system needs for the expanded uses, and for obtaining a new food service establishment license, and 2) provide verification from YHD to the Planning Official that these requirements have been met, as a condition of approval.

8. The applicants shall ensure compliance with the issues described in the Department of Ecology's letters of December 1, 2021, and May 18, 2022. For further information contact the individuals indicated in those letters.

9. The applicants shall record with the County Auditor the road maintenance agreement submitted with their application.

10. Exterior lighting for all uses and signs shall be directed downward and otherwise arranged, fully shaded, screened, shielded, and of a design that results in the light being directed onto the site and of an intensity or brightness that does not reflect or cause glare or light intrusion into any adjacent or nearby residential use or interfere with the safe operation of motor vehicles in accordance with YCC 19.10.040(10).

11. Prior to any development of overnight cabins on Parcel No. 201116-43016, the project site plan must be modified to locate any and all overnight cabins on outside of the existing orchard or lavender blocks. Alternatively, the site plan may provide for one or more blocks of cabins immediately adjacent to lands not agricultural production so long as no more than one acre of land is converted to nonagricultural use by the project. The modified site plan must be submitted to the Yakima County Planning Official for review and approval prior to any cabin or associated parking development.

12. The project shall not extend beyond that described in the application and associated site plan submitted with the application referenced as file numbers CUP2021-00054 / SEP2021-00042. Any future change(s) to this project must be submitted to the Yakima County Planning Division for review and a decision based on Title 19 YCC and other pertinent provisions of the County code. For further information please contact the Yakima County Public Services Department: Planning Division at 509-574-2300.

13. The owners, their grantees and assignees in interest shall meet the terms of Compliance, Extensions, Expirations, and Reinstatement requirements per YCC 16B.07.050 (see Attachment A). The applicant shall complete all required conditions, submit documentation that all conditions were met and request County inspection or review to determine that the requirements have been fulfilled within the timeframe specified in the decision and any authorized extensions. For further information please contact the Yakima County Public Services Department: Planning Division at 509-574-2300.

14. Time Limit: The conditions of approval for this Conditional Use Permit must be completed within three (3) years of the date of the BOCC's decision. Extensions of time for cause may be granted for up to 10 years pursuant to YCC 19.30.100(4)(c). For further information please contact the Yakima County Public Services Department: Planning Division at 509-574-2300.

DATED THIS 12<sup>TH</sup> DAY OF JULY 2022

  
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PATRICK D. SPURGIN, HEARING EXAMINER PRO TEM