



## CHELAN COUNTY HEARING EXAMINER

Chelan County Administration Building, Room 1

**This public hearing will be in a videoconferencing format due to the ongoing precautions associated COVID-19. Additional instruction to attend this hearing remotely will be posted on the website of Community Development.**

**October 21, 2020, 1:00 pm**

**Chelan County Hearing Examiner:** Andrew Kottkamp

**Chelan County Staff:** Director – Jim Brown, Assistant Director – Catherine Lorbeer, Building Official – David Spencer, Code Enforcement Officer – Angel Hallman, Deputy Prosecuting Attorney – Marcus Foster, Assessor – Deanna Walter, Permit Clerk – Wendy Lane

**Public/Agencies:** LVD, Emily, Dave & Darla, js, Breanne, Jerry's iPad, Fred's iPad, BH, EM, Nancy Noock, LH, ab, joeh, iPad 8

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### **AGENDA:**

#### **I. CALL TO ORDER**

Hearing Examiner Kottkamp called the Hearing to order at 1:00 pm. No objections were given to Mr. Kottkamp running today's hearing. Instruction was given to attendees on how the hearing is conducted and how to participate, testify, and appeal a decision.

#### **II. PUBLIC HEARINGS**

**CUP 20-008:** An application for a Conditional Use Permit for the addition of 13 RV sites and continued operation as a minor RV park. Historically, the property has been operated as a Mobile Home Park and as a Recreational Vehicle/Campground operation. The subject property is 2.38 acres within the Rural Residential/Resource 5 (RR5) zoning district. Primary access is from Self's Motel Road, potable water is provided by an on-site well, septic was approved by the Chelan-Douglas Health District. Project Location: 3601 Self's Motel Rd., Cashmere, WA 98815; and identified by Assessor's Parcel No.: 23-19-11-220-400. **Planner – Jamie Strother**

This application was continued until October 18, 2020 at 1:00 pm without additional noticing.

**AA 20-005:** An Administrative Appeal was submitted by Michelle Green, of Gatens, Green, Weidenbach, PLLC (applicant) on behalf of Karma Ventures, LLC of a Notice and Order of Code Violations issued on June 23, 2020. The subject property is within the Rural Residential Resource-1 Dwelling Unit per 2.5 Acres (RR2.5)(winery portion)/Rural Residential Resource-1

Dwelling per 5 Acres (RR5) zoning designation. Project Location: 1681 S Lakeshore Rd., Chelan, WA, 98816; and identified by Assessor's Parcel No.: 27-22-08-953-170. **Code Enforcement – Angel Hallman**

Mr. Kottkamp discussed the application details, and entered the staff-report, Appeal materials, Code Enforcement files, Land Use files and amendments, and entire planning staff files into the record.

Michelle Green was sworn in, on behalf of the appellant. She spoke of a business at risk. Next came a timeline and history of the Conditional Use Permits applied for over the years. She also spoke about Resolution 2008-141, which amended the definition of a winery. Then followed, in 2011, a complaint from a neighboring property owner. At this point, Ms. Green disputed a portion of the staff-report as not being consistent with the timeline of Karma Ventures. She then spoke of amendments to Conditional Use Permits that went before the Hearing Examiner. The approved amendments had conditions of approval which were not satisfied by the applicant. She disputes some of the arguments, in the staff-report, on what exactly was not satisfied. Next in the timeline, in January 2018, the Commissioners revisited the Resolution and changed the definition of winery related to food and beverage service. She again disputes the reporting of this portion of the timeline with the timeline stated in the staff-report. In November 2018, Karma was contacted by the county and received a correction notice with respect to an issue with the commercial kitchen drains. Ms. Green explained the steps taken to satisfy the correction notice. Then in September 2019, Karma was issued a notice of violation. She explained the violation and the actions Karma took to comply with the outstanding conditions of approval. Over the next several months, Karma worked to come into compliance. She stated that all of the outstanding conditions have been complied with under the amended permits, but states that the county refuses to recognize compliance and refuses to accept submittals. She feels that the key issue before the Hearing Examiner is whether or not the Conditional Use Permits have expired. She went on to explain their position on the matter.

Michelle Green read from an internal email from Chelan County. Marcus Foster objected to the statement read. Mr. Kottkamp asked the basis for the objection. Mr. Foster answered and then Mr. Kottkamp asked Ms. Green to explain their position. Mr. Kottkamp ruled to exclude all communications between the county attorney and staff in this matter. He also explained if a protective order is sought, or any event of a court coming back to him and says he needs to include those items as well, he will follow whatever order a court might give him.

Ms. Green asked for clarification on whether or not the documents, in question, will be included in the record to the extent that the ruling could go up on appeal. Mr. Kottkamp answered that they will be excluded from the record.

Michelle Green again returned to determine the standard on whether or not a permit is void. She continued with Karma's position on the matter. She stated that "even if" the Hearing Examiner agreed with the county's position, Karma Ventures should be grandfathered in as a legal non-conforming use of the business.

Buell Evan Hawkins, Jr., was sworn in to testify on behalf of the appellant. He covered his history as a Chelan County Commissioner from 2001-2008. He spoke on how the county

encouraged the growth of wineries during that time period. He addressed the intent the Commissioners had in working with the wine industries to enable them to grow. He was disappointed in the direction the county took in not assisting wineries to grow and prosper and in Code Enforcement's efforts to close this business when there were worse and more egregious code violations within the county.

Marcus Foster objected to the totality of Mr. Hawkins testimony on the basis that it is irreverent to the question of whether Code Enforcement violations have been occurring. Mr. Kottkamp overruled the objection.

Michelle Green continued with her timeline now focusing on the plumbing issues of the business with regard to the sewer and the installation of a grease trap.

Jeffrey L. Logg was sworn in to testify on behalf of the appellant. He stated he was hired to verify that the plumbing system is installed properly and the grease trap installed properly and the correct size for the sink. He used a camera to inspect the line from inside the kitchen to the manhole; then from the manhole to within about 4 feet of the manhole by the road. He found no evidence of any deformities in the pipe or any blockages of any type. Mr. Kottkamp asked for the date that the service was performed and Ms. Green answered the question.

Julie Pittsinger was sworn in to testify. She spoke about her business and its place in the community. She covered the history of the business, including the preliminary plans. She believes community members who wanted to stop the business venture back in 2007-2008 are still the same people who are currently trying to shut down the business. Ms. Pittsinger position is that the county is in error and the staff-report is incorrect. She asked for objectivity on the matter.

Michelle Green asked that the Hearing Examiner reverse the violation order and allow Karma to continue operating their business.

Marcus Foster, a deputy prosecutor for Chelan County, was sworn in to testify. He started off by addressing a few points that Michelle Green made. He stated that this was a typical code enforcement action. There is no animus on behalf of the county and the county has received a large number of complaints regarding sewage backups and noise from several parties. He stated that there was a significant number of problems going on with this property.

Mr. Foster continued with the definition of the word "restaurant" and how it is defined in the code. He walked through the county's position on the code violation and addressed the non-conforming use of the kitchen. He stated that since Karma has never established a legal restaurant, they cannot have a non-conforming use of such.

Marcus Foster went over the Conditional Use Permits acquired over the years. He covered how food and beverage services were different from the operation a restaurant.

Mr. Foster asked to submit into evidence, an email from Claire Jenkins, with regard to sewage problems associated with Karma Ventures. Mr. Kottkamp asked questions about the email and

the roll it played in the issuance of the code violation. Mr. Kottkamp did not allow the email to be admitted into evidence.

Marcus Foster continued with the county's position with the grease trap and when it was installed. He stated that county staff have reviewed files and found that permits were not applied for and other conditions of approval were not submitted until after the code violation was issued.

Mr. Foster covered the conditions in which a Conditional Use Permit becomes void. He also covered how restaurants were not allowed, under any conditions, in residential areas. Next, he refuted Mr. Hawkins' testimony and asked the Hearing Examiner to reject the testimony as irrelevant or to give it very little weight.

Mr. Kottkamp asked Marcus Foster about the 2008 county permits, the amendments associated with them and what the code enforcement was based on. Mr. Foster answered his questions.

David Spencer, Chelan County's Building Official, was sworn in to testify. Marcus Foster asked him questions about the plumbing issues at Karma Ventures and Mr. Spencer answered them.

Marcus Foster asked the Hearing Examiner to uphold the violations as valid.

Michelle Green was given the opportunity to give a rebuttal to the county's position. She spoke about county zoning and what type business was allowed.

Mr. Kottkamp stated that he could see both sides on the matter and asked Ms. Green questions to clarify Karma's stance on the matter. She gave answers to his questions and asked Buell Hawkins to assist in the explanation. There were some back and forth on the term "restaurant."

Michelle Green continued and with a couple of points that Marcus Foster covered. She spoke of complaints from the community. She stated that Karma has corrected issues as they became known. She pointed out that Karma provided expert testimony with regard to the plumbing. She wanted to correct the timeline that Marcus Foster provided on the grease trap.

Ms. Green continued on the issue of the Conditional Use Permits and the compliance letter by code enforcement. She pointed out inconsistencies between the documents. Ms. Green is concerned that this code violation will set a court precedence for wineries and businesses in the future.

Mr. Kottkamp asked for closing remarks. Marcus Foster stated that Karma would have to shut down because that is what the law would require in this case. He provided argument for this position. Michelle Green countered that the Conditional Use Permits have not expired and, even if they accepted the county's position on the permits, Karma has the right to continue under a legal non-conforming use.

Mr. Kottkamp stated that he was not going to keep the record open. A written decision will be made within the next ten working days. If he cannot do it in that timeframe, Mr. Kottkamp will contact both attorneys and request an extension.

**II. ADJOURNMENT**

Hearing Examiner Kottkamp adjourned the October 21, 2020, meeting.