

CHELAN COUNTY

DEPARTMENT OF HEARING EXAMINER

**316 WASHINGTON STREET, SUITE 301
WENATCHEE, WASHINGTON 98801**

BEFORE THE CHELAN COUNTY HEARING EXAMINER

IN THE MATTER OF:
AA 2020-005

) **FINDINGS OF FACT,**
) **CONCLUSIONS OF LAW AND**
) **DECISION ON**
) **ADMINISTRATIVE APPEAL**

I. FINDINGS OF FACT

1. This is an Administrative Appeal of a Notice and Order rendered under File No. CE 11-0056.
2. The Appellants are Karma Ventures, LLC, PO BOX 1524, Chelan, WA 98816.
3. The Appellant's property currently contains a vineyard, a winery, a restaurant and includes places of public and private assembly.
4. Property Characteristics and Description: The subject property is located adjacent to South Lakeshore Road in Lake Chelan and is approximately 5.1 acres in size. The subject property is located on a hillside. The southern and highest portion of the subject property is located at approximately 1340 feet in elevation while the northern most portion of the property is located at approximately 1150 feet. Located on the subject property are vineyards, a winery, a restaurant, a panorama patio used as places of public and private assembly such as wedding venues.
5. The majority of subject property is zoned RR2.5, although a small portion of the property is zoned RR5 (on the west).
6. On April 5, 2005, Conditional Use Permit (CUP) 2005-008 and 2005-009 were submitted for a winery, greater than 1,500 sf of retail space, and for places of public and private assembly, respectively.
7. On August 19, 2005, the Chelan County Hearing Examiner conditionally approved both CUP 2005-008 and 2005-009.
8. CUP 2005-008 and 2005-009, Finding of Fact no. 49 refers to public testimony of Julie Pittsinger, where she stated the operations will be small with no restaurant facilities and/or overnight accommodations.
9. On February 21, 2006, commercial building permit no. 060089 was submitted for an underground cave to store wine barrels.

10. On June 12, 2007, commercial building permit no. 070400 was submitted for a tasting room.
11. On February 6, 2008, building permit no. 060089 was issued a certificate of occupancy for the cave wine storage.
12. On August 19, 2008, both CUP 2005-008 and 2005-009 expired because some conditions of approval had not been satisfied.
13. On October 7, 2008, under Resolution 2008-141, the Board of Chelan County Commissioners added food and beverage service to the definition of “winery”. The definition of *Food and Beverage Service* included “on-site” preparation, service and consumption of food and beverages for activities and uses that are accessory to places of public and private assembly.
14. On October 7, 2008, the Chelan County Code also included a definition of a restaurant.
15. Had the Chelan County Commissioner’s intended to allow a restaurant to be used as an accessory use for a winery, the Chelan County Commissioners simply could have stated so in Resolution 2008-14. Instead, the Chelan County Commissioners created a new category, “Food and Beverage Service” which, like a restaurant, includes on-site preparation and consumption of food and beverages. However, unlike a restaurant, it is allowed as an accessory use to a winery.
16. The Hearing Examiner finds that “Food and Beverage Service” set forth in Resolution 2008-141, as an accessory use of a winery, is different than a restaurant. Specifically, “Food and Beverage Service” is consistent with an accessory use for a winery authorizing the applicant to prepare, on-site, snacks and other light appetizers that would complement wine tasting. Also, it is consistent with preparing food and beverages for on-site consumption at public and private assemblies (i.e. weddings).
17. On May 2, 2011, Chelan County Code Enforcement received a complaint from Michael Meyers.
18. On July 22, 2011, Chelan County Code Enforcement received a complaint from Clair Jenkins.
19. On September 15, 2011, CUP 2005-008B and 2005-009B were submitted, requesting an amendment to the original conditional use permits to allow for Food and Beverage Service. The request was amended to include the deletion and/or modification of four (4) conditions of approval.
20. On November 18, 2011, Boundary Line Adjustment (BLA 2011-238) was recorded.
21. On March 21, 2012, the Chelan County Hearing Examiner conditionally approved CUP 2005-008B and 2005-009B.
22. CUP 2005-008B and 2005-009B, Finding of Fact No. 57 refers to public testimony of Julie Pittsinger, where she stated she obtained a food service permit from the Chelan-Douglas Health District without referring to the conditions set in the condition of approval prohibiting on-site food preparation. Under Finding of Fact no. 64, Ms. Pittsinger provided rebuttal testimony where she stated that while she knew she was not allowed in the conditional use

permit to have on-site food preparation, she thought the permit from the Health District somehow overruled this condition.

23. On June 4, 2012 building permit no. 070400 was issued a certificate of occupancy for the tasting room.
24. On August 29, 2012, the Chelan County Hearing Examiner revised conditions of approval after the review hearing held on August 1, 2012 with regards to noise.
25. On March 21, 2015, both CUP 2005-008B and 2005-009B expired because some conditions of approval had not been satisfied.
26. On November 7, 2016, commercial building permit no. 160712 was submitted for an interior bathroom and an exterior bathroom addition.
27. On May 2, 2017, building permit no. 160712 received a final inspection.
28. On January 30, 2018, under Resolution 2018-08, the Board of Chelan County Commissioners amended the definition of *Food and Beverage Service* in CCC Section 14.98.835 to mean “catered food, or prepackaged food for activities and uses that are accessory to places of public and private assembly, wineries and other similar uses” and removed the reference to on-site preparation.
29. On November 9, 2018, Building Inspector Dave Lafferty posted a correction notice on the subject property to contact the Building Official regarding the commercial kitchen drains causing sewer problems.
30. On June 17, 2019, the City of Chelan sent an email to Chelan County indicating damage to the Lake Chelan Sewer District. The email documents grease from Karma Canyon Winery due to the lack of, or an inadequate, grease trap.
31. On September 27, 2019, a Notice of Violation was issued to Karma Ventures, LLC via certified mail and claimed on October 3, 2019 by Jeannie Kapple.
32. A letter dated October 23, 2019, was received from Michelle Green regarding Karma Canyon Winery CUP 2005-008B and 2005-009B, where she identified several conditions of approval that still required compliance.
33. On April 1, 2020, Angel Hallman returned a call to Ray Nelson, who was complaining about the sewer system being clogged on March 30, 2020.
34. On May 11, 2020, Interim Assistant Director Deanna Walter sent a CUP expiration letter to Karma Ventures, LLC.
35. On June 23, 2020, Chelan County issued a Notice and Order to Karma Ventures, LLC via certified mail and it was claimed on July 3, 2020 by Jeannie Evig Kapple.
36. On July 6, 2020, a request for an appeal of the Notice and Order issued June 23, 2020 was received from Attorney Michelle Green. File AA 20-005 was assigned to the request and the appeal was determined to be timely submitted.

37. Specifically, the following conditions of approval of CUP 2005-008B and 2005-009B were not satisfied:
- 37.1 No. 4 (requirement to obtain a conversion permit for the wine cave storage facility for a dining facility within thirty days of issuance)
 - 37.2 No. 16 (required review hearing during 2013)
 - 37.3 No. 17 (requirement to submit a landscaping/screening plan)
 - 37.4 No. 21 (requirement to submit an amended traffic impact study within two weeks after the end of the appeal period)
 - 37.5 No. 22 (requirement to submit a letter of compliance)
 - 37.6 No. 28 (requirement to bring proposal/project into conformance with all applicable requirements of Building Codes).
38. It is the Applicant's responsibility to ensure that all conditions of approval have been fully satisfied prior to starting the use authorized by the conditional use permit.
39. Starting the use authorized by the conditional use permit without full satisfaction of, and full compliance with, all conditions of approval does not make the use legal.
40. The Chelan County Code definition of conditional use (CCC 14.98.435) requires that the use comply with all conditions and standards of operation required by the Hearing Examiner.
41. The conditions of approval for a conditional use permit are those measurable conditions that will mitigate potential adverse consequences of the proposed use. A conditional use permit authorizes a use, but prior to the use being started, the Applicant must satisfy all conditions of approval. The Hearing Examiner expressly finds that lawful operation of a use under a conditional use permit does not occur until all of the conditions of approval have been satisfied.
42. The recipient of the conditional use permit has the obligation to comply with all conditions of approval before a use begins.
43. Starting a use authorized by a conditional use permit without full compliance of all conditions of approval, means that the use started has not been authorized by the permit. In other words, the use is not allowed or authorized by the permit until all conditions of approval have been satisfied.
44. As used Chelan County Code 11.93.110(1) the Hearing Examiner finds that the term "if not acted upon" necessarily means the use must comply with all conditions of approval. In other words, use cannot be lawfully acted upon until all of the conditions of approval have been satisfied.
45. The Hearing Examiner does not have the legal authority to grant or otherwise order equitable relief.
46. Uses are, or have been, recently occurring at the subject property including, but not limited to: the operation of a restaurant known as "18 Brix Restaurant" and an associated on-site kitchen for on-site food preparation.

47. Dining is currently being advertised on the Karma Kanyon website, and occurring within the underground cave structure. This is consistent with a restaurant on-site.
48. Per Chelan County Code (CCC), Section 14.98.1575, a *Restaurant* means an establishment where food and drink are prepared and served on-site and may be consumed on- or off-site.
49. CCC Section 11.04.020, District Use Chart, prohibits the operation of *Restaurants and Drinking Establishments* within this property's RR2.5 and RR5 zoning designations.
50. No permit has been, or can be, issued for the operation of a restaurant at this location.
51. There is clear evidence and photos of restaurant service including on-site food preparation, along with their self-identification as a "restaurant" complete with photos of food, facilities and cuisine typical of a higher-end restaurant, using on-site commercial kitchen type of production, showing customers eating. This is easily found on Karma's own website and their own Facebook page. They have "Chefs" named. Much additional verifying information is readily available for viewing by the public on other published websites such as TripAdvisor and Yelp. There are references to food service and anecdotes of on-site cooking of "real food". Also, there was reference to "long wait" for the food, indicative of on-site kitchen preparation. This property was, over recent years and months, and still is, being used as a restaurant operation served by a commercial kitchen, in addition to being a vineyard and winery.
52. A Chelan-Douglas Health District permit to operate a Food Establishment was issued with a January 31, 2021 expiration date.
53. CUP 2005-008B and 2005-009B, Finding of Fact no. 36.1 of the March 21, 2012 decision refers to Building and Fire Safety comments stating, if dining is proposed in the cave storage, a conversion permit will be required for dining as the certificate of occupancy only authorizes a storage facility.
54. The 2015 International Building Code (IBC), Section [A]105.1 states "any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install enlarge, alter, repair, removed, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the building official and obtain the required permit".
55. Chelan County records indicated that a conversion permit has yet to be applied for or issued for dining within the underground cave at the subject property. On June 25, 2020, after the Notice and Order was issued, the applicant attempted to apply for a conversion permit; however, they were notified via email by Deanna Walter, Interim Assistant Director that CCC Section 16.14.020 prohibits the acceptance of permit applications when there is an existing violation allegation against the property.
56. Based on June 17, 2019 correspondence from the City of Chelan and the Lake Chelan Sewer District, it appears that a commercial kitchen is in operation and grease from the commercial kitchen at Karma Kanyon has blocked the sewer system.

57. Several complaints have recently been received by the Lake Chelan Sewer District staff, citing several examples of partial and complete blockages of the sewer line in the neighborhood, and other associated system malfunctions that they have stated are conclusively tied to grease coming from the Karma Canyon sewer line after the district undertook an internal line inspection by a probe.
58. The 2015 Uniform Plumbing Code (UPC), Section 1014.1 states “Where is determined by the Authority Having Jurisdiction that waste pretreatment is required, an approved type of grease interceptor(s) in accordance with ASME A112.14.3, ASME A112.14.4, CSA B481, PDI G-1010, or PDI G-102, and sized in accordance with Section 1014.2.1 or Section 1014.3.6, shall be installed in accordance with the manufacturer’s installation instructions to receive the drainage from fixtures or equipment that produce grease-laden waste located in areas of establishments where food is prepared, or other establishments where grease is introduced into the drainage or sewage system in quantities that can effect line stoppage or hinder sewage treatment or private sewage disposal systems. A combination of hydromechanical, gravity grease interceptors, and engineered systems shall be allowed in order to meet this code and other applicable requirements of the Authority Having Jurisdiction where space or existing physical constraints of existing buildings necessitate such installations. A grease interceptor shall not be required for individual dwelling units or for private living quarters. Water closets, urinals, and other plumbing fixtures conveying human waste shall not drain into or through the grease interceptor”.
59. The 2015 Uniform Plumbing Code (UPC), Section 1014.1.2 states “Grease interceptors shall be maintained in efficient operating condition by periodic removal of the accumulated grease and latent material. No such collected grease shall be introduced into drainage piping or a public or private sewer. Where the Authority Having Jurisdiction shall have the authority to mandate the installation of additional equipment or devices and to mandate a maintenance program”.
60. No permits have been issued for the operation of a commercial kitchen, specifically for plumbing on the subject property.
61. The operation of commercial kitchen at the subject property is subject to appropriate kitchen hood ventilation system duct and exhaust equipment per the IMC.
62. The 2015 International Mechanical Code (IMC), Section [A]106.1 states “An owner, owner’s authorized agent or contractor who desires to erect, install, enlarge, alter, repair, remove, convert or replace a mechanical system, the installation of which is regulated by this code, or to cause such work to be performed, shall first make application to the code official and obtain the required permit for the work”.
63. The 2015 (IMC), Section 506.1 states “Commercial kitchen hood ventilation ducts and exhaust equipment shall comply with the requirements of this section. Commercial kitchen grease ducts shall be designed for the type of cooking appliance and hood served”.
64. Chelan County records indicate that no commercial building permit has been issued for the installation of mechanical equipment, which includes hood ventilation ducts and exhaust equipment, within the existing winery structure.

65. Pursuant to CCC, Section 16.02.030, all violations of this title and all applicable titles, statutes, and regulations are hereby declared to be detrimental to public health, safety, and welfare and are hereby declared to be public nuisances. This title declares certain acts to be civil violations and establishes non-penal enforcement procedures and civil penalties.
66. The Notice of Application and Public Hearing was issued on October 10, 2020.
67. After due legal notice, an open record public hearing was held via Zoom video conference on October 21, 2020.
68. Admitted into the record were the entire Planning staff files for AA20-005, CE 11-0056 and CUP 2005-008, CUP 2005-009, CUP 2005-008(B) and CUP 2005-009(B).
69. Appearing and testifying on behalf of the Appellants were the following individuals:
- 69.1 Michelle Green. Ms. Green testified consistent with the Appellant's written materials. Ms. Green testified as the attorney for the Appellants. She acknowledged that certain conditions of approval have not been satisfied. She argued that the use of a restaurant on the property has been fully developed since 2008 and that the County, in not taking any enforcement action for over a decade, has acquiesced to this use or has waived its right to contest this use.
- During the course of the hearing, the Appellant attempted to admit into the record certain attorney-client communications that were inadvertently disclosed to the Appellant. The Hearing Examiner ruled that all communications between any County attorney, exclusively with County employees or officials, is excluded as evidence in this hearing.
- The Appellant also argued that the restaurant is a legal, non-conforming use and should be allowed.
- Finally, Ms. Green indicated that the Applicant was ready to comply with all Conditions of Approval and continue their use.
- 69.2 Buell Hawkins. Mr. Hawkins testified that he was a County Commissioner between the years 2001 and 2008. He indicated that his intent in passing Resolution 2008-141 was to inspire growth and prosperity within the wine industry.
- 69.3 Jeffrey Logg. Mr. Logg testified that he has recently inspected the size of the plumbing system, sent cameras through the plumbing system and indicated the plumbing system is working properly.
- 69.4 Julie Pittsinger. Ms. Pittsinger testified that they host 40-50 weddings per summer. She also testified that she believed the motivation behind this enforcement action was political.
70. Marcus Foster. Mr. Foster appeared for the County. Mr. Foster argued consistent with the written materials submitted by the County. He indicated that the County's position was that the commercial kitchen itself was not illegal, but the operation of a restaurant is not legal as it has never been allowed the zone in which the subject property is located. He argued that because the restaurant has never been a legal use it cannot be a legal non-conforming use.

The County's position is that the Hearing Examiner does not have any authority to authorize a use that is not allowed within a particular zone. The Hearing Examiner finds that no variance for the use to allow a restaurant has ever been sought by the Appellant.

71. David Spencer. Testifying on behalf of the County was David Spencer. Mr. Spencer is the building official for Chelan County. He testified regarding the complaints of grease originating from the Karma Kanyon facility, that grease traps are required, and that Karma had no plumbing permit, as required by Chelan County Code.
72. In reply, Ms. Green testified that while a stand alone restaurant would not be allowed in this zone, a restaurant as an accessory use to a winery, would be permitted.
73. In reply, Mr. Hawkins testified that he did not believe there was a distinction between a restaurant and on-site food service. However, the Hearing Examiner does find that there is a distinction between a restaurant and "Food and Beverage Service" as allowed as an accessory use for a winery.
74. The Appellant's position that not all Conditions of Approval need to be satisfied in order to have a legal use would ultimately result in uses authorized by a conditional use permit being started and continued with none of the conditions being satisfied. As stated above and below in the Conclusions of Law, the Hearing Examiner finds, and concludes, that all Conditions of Approval must be satisfied before the lawful operation of a conditional use permit can be found.
75. Bringing an enforcement action is not necessary for the use to be out of compliance with the conditional use permit.
74. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has no authority to grant relief in equity, such as in waiver and estoppel.
2. The Hearing Examiner has been granted authority to render this Decision.
3. Conditional Use Permits (CUP's) 2005-008B and 2005-009B are expired due to failure to complete all of the conditions of approval.
4. The operation of Karma Kanyon for a winery, greater than 1,500 sf of retail space, and places of public and private assembly, without completing all conditions of approval associated with respective approvals at said property, is contrary to and in violation of CUP 2005-008B and CUP 2005-009B, which superseded CUP 2005-008 and CUP 2005-009.
5. Per Chelan County Code (CCC), Section 11.04.020, District Use Chart, *Restaurants and Dining Establishments* are not a permitted or conditional use within the RR2.5 and RR5 zoning districts, and never have been allowed.
6. The use of the underground cave structure for dining is contrary to and in violation of the 2015 International Building Code (IBC), Section [A] 105.1.

7. The operation of a commercial kitchen without an approved and/or properly maintained grease interceptor is contrary to and in violation of the Uniform Plumbing Code (UPC), Section [A]1014. While a commercial kitchen may be allowed for catered food with an approved building permit, food service prepared and served on-site as a restaurant is not allowed.
8. The installation of mechanical equipment without a permit (operation of a kitchen hood ventilation system duct and exhaust equipment) is contrary to and in violation of the 2015 International Mechanical Code, Section 506.
9. The operation of “18 Brix Restaurant” is outside the scope of any previously approved CUP. At all times in which Karma Canyon has been operating, restaurants have been specifically prohibited in RR2.5 and RR5 zones pursuant to CCC 11.04.020.
10. The violations at said property are detrimental to public health, safety, and welfare, and are declared to be public nuisances pursuant to Chelan County Code, Section 16.02.030.
11. Starting the use authorized by the conditional use permit without full compliance of all conditions of approval does not make the use legal.
12. The Chelan County Code definition of conditional use (CCC 14.98.435) requires that the use comply with all conditions and standards of operation required by the Hearing Examiner.
13. The Appellant has the burden of proof to show the Appellant’s compliance with all applicable rules and regulations to dispute the code enforcement action.
14. Bringing a code enforcement action is not necessary for the use to be out of compliance with the conditional use permit.
15. The Hearing Examiner has no authority to authorize a use that is prohibited in a particular zone.
16. The Appellant’s restaurant on-site is not a legal nonconforming use.
17. Lawful operation of a use under a conditional use permit does not occur until all of the conditions of approval have been satisfied.
18. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

III. DECISION

WHEREFORE, based upon the above Findings of Fact and Conclusions of Law, the Notice and Order dated June 23, 2020, and File No. CE 11-0056 rendered by the Chelan County Community Development Director, **IS HEREBY AFFIRMED** in all respects.

Dated this 3rd day of November, 2020.

CHELAN COUNTY HEARING EXAMINER



Andrew L. Kottkamp

This decision is subject to appeal pursuant to the Chelan County Code. Appeals must be timely filed. Anyone considering an appeal of this decision should seek immediate legal advice.