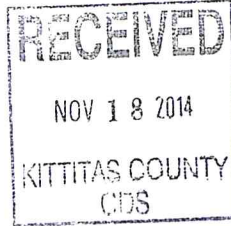


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Attorneys

Andrew L. Kottkamp
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November 13, 2014

Ms. Stephanie Mifflin
Kittitas County Community
Development Services
411 N. Ruby Street, Suite 2
Ellensburg, WA 98926

Re: CU-12-00003 SE-13-00002, Webb

Dear Stephanie:

Enclosed please find my recommended decision regarding CU-12-00003
SE-13-00002, Webb.
Should you have any questions, please call.

Sincerely,

Andrew L. Kottkamp
ANDREW L. KOTTKAMP (dn)

ALK:dn
Enclosures

**KITTITAS COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF

CU-12-00003 & SE-13-00002
Webb



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**RECOMMENDED
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION**

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on October 30, 2014, the Hearing Examiner having taken evidence hereby submits the following Recommended Findings of Fact, Conclusions of Law and Decision as follows:

I. RECOMMENDED FINDINGS OF FACT

1. This matter is a Conditional Use Application from Matt & Jessi Webb to operate a home occupation which produces noise on approximately 12 acres in the Commercial Agriculture zone. The applicant plans to utilize the existing barn facility and the grounds of the property to host weddings, parties, other events, and other outdoor activities during the summer months.
2. This proposal is on two (2) parcels located approximately eight (8) miles southeast of Ellensburg at 6280 Badger Pocket Road, in a portion of Section 36, Township 17 N., Range 19 E., W.M. in Kittitas County, Washington. Assessor's map numbers 17-19-36000-0016 & 17-19-36000-0025 (must be sold with -0016).

3. Site Information:

Total Property Size:	12 acres
Number of Lots: proposed	2 (must be sold with); no new lots are being proposed
Domestic Water:	Bottled water would be provided
Sewage Disposal:	Sani-cans would be provided
Power/Electricity:	Puget Sound Energy
Fire Protection:	Kittitas County Fire & Rescue
Irrigation District:	Cascade Irrigation District

4. Site Characteristics:

North: Mix of agricultural lands and dispersed residences.
South: Mix of agricultural lands and dispersed residences.
East: Agricultural lands
West: Mix of agricultural lands and dispersed residences.

5. The Comprehensive Plan designation is "Commercial Agriculture."

CU-12-00003 SE-13-00002
Webb
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6. The subject property is zoned “Commercial Agriculture,” which allows for a home occupation which produces noise as a conditional use.
7. Kittitas County Code 17.08.290 defines “home occupation” as “any lawful profession, craft or service commonly carried on with in a dwelling or accessory building provided such activity is secondary to the use of said dwelling for residential purposes, and provided that there is no outdoor display of merchandise. Home occupations include operations that provide care to twelve (12) or fewer individuals in any twenty-four (24) hour within the care giver’s place of residence. This definition shall not be interpreted to include the sale of firewood, farm produce, or similar activities.”
8. At the open record public hearing, the Applicant stipulated that the above definition of “home occupation” applies to the application submitted by Mr. and Mrs. Webb.
9. An application for a conditional use permit was received by Community Development Services on July 13, 2012. The application was deemed complete on July 31, 2012. A Notice of Application was issued on August 22, 2012. This notice was mailed to government agencies, adjacent property owners, and the applicant. The SEPA Checklist was received by Community Development Services on February 8, 2013. The application was deemed complete on March 3, 2013. A Notice of Application was issued on March 21, 2013. This notice was mailed to government agencies, adjacent property owners, people of record and the applicant.
10. The conditional use permit application submitted on July 13, 2012 was approved by the Board of Adjustment on October 10, 2012. This approval was timely appealed. A Stipulation and Order of Remand was entered on January 10, 2013. In that Stipulation and Order of Remand, the applicant stipulated that the matter would be heard by the Hearing Examiner, and that the code in existence as of January 10, 2013 would be the code which applied to the consideration of the application. In other words, it was stipulated that the vesting date was January 10, 2013.
11. Based upon review of the submitted application materials including an environmental checklist, correspondence received during this 15 day comment period and other information on file with Community Development Services, a Determination of Non-Significance (DNS) was issued on October 6, 2014. The appeal period ended on October 20, 2014 at 5:00 p.m. No appeals were filed.
12. Staff conducted an administrative critical area review in accordance with KCC 17A and found no critical areas identified on the site.
13. KCC 17.31.030 (10) requires a conditional use permit for “Home occupations which involve outdoor work or activities or which produce noise.”
14. The following agencies provided comments during at least one of the two comment periods: Kittitas County Fire & Rescue, Kittitas County Public Health, and Kittitas County Public Works. Comments were also received by Kittitas County Fire Marshal after the end of the SEPA comment period. All comments were included in the exhibits admitted into the record.

15. Numerous public comments were received during both comment periods and have been included in the index file record, and were admitted into the record.
16. The subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities and mineral operations may occur that are not compatible with residential development for certain periods of limited duration. Commercial natural resource activities and/or mineral operations performed in accordance with county, state and federal laws are not subject or legal action as public nuisances. (RCW 7.48.305).
17. An open record public hearing after due legal notice was held on October 30, 2014.
18. The entire Planning Staff file was admitted into the record at the public hearing.
19. The Kittitas County Community Development Services recommended approval of this conditional use permit, subject to recommended conditions of approval.
20. Admitted into the record were the following exhibits:
 - 20.1 Exhibit 1: Complete Project file from Original Submittal and Process
 - 20.2 Exhibit 2: Superior Court – Affidavit of Service – 12/10/12
 - 20.3 Exhibit 3: Superior Court – Amended petition for Review of Land Use Decision
 - 20.4 Exhibit 4: Superior Court – Notice of Appearance – 12/10/12
 - 20.5 Exhibit 5: Superior Court – Summons – 12/10/12
 - 20.6 Exhibit 6: Email between CDS & Applicant – 2/6/13
 - 20.7 Exhibit 7: Superior Court – Stipulation & Order of Remand – 1/10/13
 - 20.8 Exhibit 8: KC SEPA Checklist receipt – 2/8/13
 - 20.9 Exhibit 9: Site Plan – 2/8/13
 - 20.10 Exhibit 10: Site photos from Applicant – 2/8/13
 - 20.11 Exhibit 11: SEPA Checklist – 2/8/13
 - 20.12 Exhibit 12: Staff review info
 - 20.13 Exhibit 13: Deem Complete Letter – 3/4/13
 - 20.14 Exhibit 14: Affidavit of Posting – 3/7/13
 - 20.15 Exhibit 15: Notice of Application & Affidavit of Mailing/Publication – 3/21/13
 - 20.16 Exhibit 16: Kittitas Valley Fire & Rescue comment – 3/21/13
 - 20.17 Exhibit 17: Matt Webb (applicant) letter with attachments – 4/4/13
 - 20.18 Exhibit 18: Kirk & Lisa Groenig comment – 4/8/13
 - 20.19 Exhibit 19: Dewaine & Bertha Moore comment – 4/8/13
 - 20.20 Exhibit 20: Badger Pocket farmers and neighbors opposed to the Webb Party Barn petition – 4/8/13
 - 20.21 Exhibit 21: Ritch & Melissa Brownlee comment – 4/8/13
 - 20.22 Exhibit 22: Well & Winnetta Bartsma comment – 4/8/13
 - 20.23 Exhibit 23: Halverson Northwest Law Group comment – 4/8/13
 - 20.24 Exhibit 24: Transmittal of Comment to Applicant – 4/9/13
 - 20.25 Exhibit 25: Longacre comment email – 4/4/13
 - 20.26 Exhibit 26: Comment letter from KC Fire Marshal received after SEPA comment closed – 4/11/13
 - 20.27 Exhibit 27: Email between Applicant and CDS – 4/12/13

- 20.28 Exhibit 28: Notice of Application affidavit of publication from DR – 4/17/13
- 20.29 Exhibit 29: Email between applicant attorney and CDS – 4/18/13
- 20.30 Exhibit 30: Affidavit of Posting – reposted sign – 5/9/13
- 20.31 Exhibit 31: Izzi email comment received after SEPA comment closed – 5/16/13
- 20.32 Exhibit 32: Letter from Applicant’s Agent requesting to place project “on-hold” – 7/19/13
- 20.33 Exhibit 33: Letter to Applicant’s Agent granting project “on-hold” status – 7/23/13
- 20.34 Exhibit 34: Letter from Applicant to resume processing – 7/8/14
- 20.35 Exhibit 35: SEPA DNS – 10/6/14
- 20.36 Exhibit 36: SEPA Notice of Decision & Public Hearing – Affidavit of Mailing – 10/6/14
- 20.37 Exhibit 37: KC Env. Health comment email received after SEPA comment closed – 10/8/14
- 20.38 Exhibit 38: WA DOH comment email received after SEPA comment closed – 10/7/14
- 20.39 Exhibit 39: Groenig comment email received after SEPA comment closed – 10/6/14
- 20.40 Exhibit 40: Hearing Examiner Agenda – 10/30/14
- 20.41 Exhibit 41: 10/30/14 Letter with Attachments from Mr. Slothower
- 20.42 Exhibit 42: Staff Report
- 20.43 Exhibit 43: Power Point Presentation from Staff

21. Appearing on behalf of the applicant was Jeff Slothower, Attorney at Law. Mr. Slothower provided argument regarding legal issues surrounding this application. Testifying on behalf of the applicant was Matt Webb. Mr. Webb testified that he was the applicant and that he lives with his family on the project site. Mr. Webb testified that they had no commercial events in 2013 or 2014. He testified that they put up a large commercial tent on the grounds for the events. He stated that the music plays inside the barn, and that there were doors on barn and the doors are open during the music events. He testified that there could be over 200 people at the events. He testified that there would be no outdoor amplified music but that the sounds from within the barn would be able to be heard outside. He testified that the barn has 1,200 square feet of floor space. He confirmed that they are no longer asking for any overnight camping at the site.

22. Testifying in opposition of the project were the following individuals:

22.1 Rich Brownlee. Mr. Brownlee testified in opposition to the project. Mr. Brownlee testified that he lived directly across the street from the project site. Mr. Brownlee testified that he has lives at this location for many years prior to the time the applicants began utilizing their property (albeit without a permit) for events in 2011, 2012. He testified weddings had lasted until 1:30 in the morning and, there was substantial noise and alcohol consumption on the property. He testified that these gatherings constituted a huge impact on his quality of life and that he has lost privacy and the events have interfered with his sleep and well being.

22.2 Carolyn Hayes. Ms. Hayes lives near the subject property. She testified as to her understanding that the legal occupancy inside of the barn used to be 54 persons. She testified as to her concern about traffic impacts and that there has not been an

adequate traffic study for this project, assuming over 200 guests are going to be utilizing the project site.

- 22.3 David Moore. Mr. Moore's father owns a farm directly north of the subject property. His concern was regarding agricultural preferences and how they would be enforced. His father owns farm property that is currently actively farmed. He had concerns also about Badger Pocket Road and whether or not it was adequate to handle the anticipated traffic going to and from the events. He testified that there is a bridge on Pocket Road near the subject site that is only 20 feet 4 inches wide and that their family has farm equipment that is 15 to 16 feet wide. He does not believe that the traffic impacts have been studied adequately.
- 22.4 Well Bartsma. Mr. Bartsma testified that he had known the Brownlees for years. He testified that he lives 1.5 miles away from the project site and he could hear events that occur there in 2011 and 2012.
- 22.5 Brian Williams. Mr. Williams testified as to his concerns as to the impact on the county roads and the impacts to neighboring farmers. He also testified as to his farm equipment that he drives on the roads as being up to 16 feet wide.
23. A home occupation contemplates that the profession, craft or service is commonly carried on within a dwelling or accessory building.
24. The applicant's proposal necessarily anticipates that substantial activity will take place outside of the residence and accessory building (barn). The applicant readily admits that the residence will not be used as part of the proposed "home occupation".
25. The applicant admits that it is intended that these public gatherings on their property will occur, in substantial part, outside of the barn. Mr. Webb testified that the weddings and other public and private events that he proposes to have on the property may have up to 200 hundred guests and possibly more.
26. The applicant provided no testimony or evidence as to what the primary purpose of the barn (accessory building) is. It appears to the hearing examiner that the primary purpose, or primary use, of the barn will be for the holding of weddings and other public and/or private events.
27. The Kittitas County Code definition of "home occupation" requires that the home occupation use within an accessory building be secondary to the use of said dwelling for residential purposes.
28. It is the Hearing Examiner's opinion that the Kittitas County Codes definition of "home occupation" contemplates that the "home occupation" will take place inside of a residence or accessory building. The Hearing Examiner does not believe that the code was intended to categorize a public event facility as a home occupation as defined by KCC 17.08.290.

29. A public or private gathering on the property, with 200 individuals attendance, which occurs substantially outdoors on the property, and only partially indoors, in a barn, is not a “home occupation”, as defined in KCC 17.08.290.
30. The Hearing Examiner recognizes that staff has recommended approval. However, based on the facts of this matter the Hearing Examiner simply can not adopt this recommendation.
31. The Hearing Examiner also accepts that the Kittitas County Code has recently been amended. As amended, a “small- scale event facility” pursuant to KCC 17.08.490, would be permitted outright, under specific circumstances, within the commercial agriculture zoning district. Even though the current Kittitas County Code may allow a “small-scale event facility” on the applicant’s property, this simply is not a valid legal reason to allow the granting of the requested permit to allow the activity as a “home occupation” as defined under the code to which this application vested.
32. The Hearing Examiner has performed research not only within Kittitas County but also other jurisdiction regarding “home occupations.”
33. Based upon the Hearing Examiner’s research, it is clear that home occupations are intended to be limited to those occupations that can be carried on completely within the home or the accessory structure. For example, services such as an accountant take place entirely within the residential structure but are secondary to the residential use. Crafts such as small pottery facilities, and services such as a mechanic whose business service is conducted entirely within the accessory structure, may be home occupations.
34. Based upon the evidence presented to the Hearing Examiner, it is clear to the Hearing Examiner that the applicant’s proposal is not a “home occupation” as defined by the Kittitas County Code in existence at the time of the applicant’s project vested.
35. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. RECOMMENDED CONCLUSIONS OF LAW

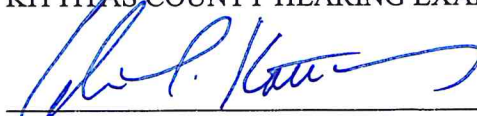
1. The Hearing Examiner has been granted authority to render this recommendation.
2. The proposal is not consistent with the goals, policies and implementation recommendations as set forth in the Kittitas County Comprehensive Plan.
3. This proposal is not consistent with The Kittitas County Code.
4. This proposal is not consistent with Kittitas County Code, 17.08.290, home occupation.
5. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. RECOMMENDED DECISION

Based on the above Findings of Fact and Conclusions of Law, The Hearing Examiner recommends that application CU 12-3 be denied.

Recommended this 13th day of November, 2014.

KITTITAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp