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2 JUN 25 2013

3 KITTITAS COUNTY  
4 CDS

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6  
7 BEFORE THE HEARING EXAMINER FOR KITTITAS COUNTY

8  
9 IN. RE. STEIGLEDER CONDITIONAL USE )  
10 PERMIT (CU-13-00002) )

APPLICANTS' HEARING BRIEF  
IN SUPPORT OF CUP FOR  
PRODUCE STAND  
11 )  
12 )  
13 )

14 **I. RELIEF REQUESTED**

15 The Christmans request that the Hearing Examiner approve their application for a  
16 conditional use permit to operate a produce stand in the detached garage on their 2.95 acre  
17 parcel in the Commercial Agriculture zone ("Produce Stand") subject to the conditions  
18 recommended in the Staff Report, and such additional conditions as the Hearing Examiner may  
19 find appropriate after the close of the public hearing.

20 **II. STATEMENT OF FACTS**

21 The Christmans reside at 8341 S. Thorp Highway on a 2.95 acre parcel. The Christman  
22 parcel is designated as "Commercial Agriculture" under the Kittitas County Code. The Code  
23 defines such zone as "an area wherein farming and ranching are the priority." KCC 17.31.010.  
24 The intent of the zone "is to preserve fertile farmland from encroachment by nonagricultural  
25 land uses and protect the rights and traditions of those engaged in agriculture." KCC 17.31.010

26 Just shy of 3 acres, the Christmans' parcel is not conducive for the agricultural uses that  
27 are permitted outright in the Commercial Agricultural zone. KCC 17.31.020. The property is,

1 however, in a suitable location to support the adjacent agricultural uses and traditions through  
2 the marketing and sale of fresh and locally grown produce.

3 The Christmans desire to open a small produce stand in the 1080 square foot detached  
4 garage that is situated on their parcel. The Produce Stand would sell fresh fruit and vegetables  
5 that are grown in Washington State, primarily in Kittitas, Chelan, and Yakima Counties. The  
6 small scale of the Produce Stand would be part of its appeal, and its location and size are such  
7 that it will primarily cater to local residents, including those who pass by the Produce Stand en  
8 route to homes such as those in Sunlight Waters. Particularly as proposed by the Christmans,  
9 and further conditioned by the County, the activity will not encroach upon or interfere with the  
10 nearby commercial agricultural operations.

11 The Christmans are seeking approval to operate the Produce Stand between the months  
12 of May and December. Prior to operation of the Produce Stand, the Christmans will obtain an  
13 access permit and make such improvements to the access/approach as required by the County  
14 to meet commercial standards. The Christmans will provide at least six parking spaces for  
15 patrons, and no parking will be allowed along South Thorp Highway. The Christmans will also  
16 provide a turn-around suitable for fire department access, and be subject to all applicable laws  
17 pertaining to fire and life safety. A fire and life safety inspection will be conducted prior to  
18 operations, and an ADA parking space will be provided and maintained consistent with  
19 applicable law and conditions set forth in the County's Staff report. The Christmans will  
20 comply with all applicable regulations pertaining to signage, and will ensure that any outdoor  
21 lighting is shielded and directed downward to minimize impacts on neighboring property.

22 The Christmans will contract with a licensed supplier for the provision of portable  
23 restrooms (ADA accessible) and associated potable-water handwashing stations that will be  
24 available on site. Bottled water will be available for sale, and to the extent desired, guests may  
25 utilize the handwashing stations for fresh water needs. The Produce Stand will also be  
26 equipped with multiple hand sanitizer stations for patrons. The Produce Stand will not need to  
27 use or rely upon the domestic well that serves the residence, as any water needs for the Produce

1 Stand can be supplied through contracts with authorized outside water suppliers, through the  
2 use of bottled water or the hand-washing stations, or through contracts/provisions with  
3 producers (i.e. producers may be required to provide water storage where necessary for certain  
4 produce). Notably, however, the Kittitas County Department of Health has indicated that it  
5 may utilize the existing well to wash fruit and incidental uses without converting the well to a  
6 Group B well (See attached Email from Mr. Mau dated June 14, 2013).

7 The Christmans are amenable to such conditions as the Hearing Examiner may find  
8 necessary to mitigate any reasonably likely and material adverse impacts of the Produce Stand.  
9 At this time, however, the Christmans are unaware of any impacts from the Produce Stand that  
10 may require further conditions.

### 11 III. STATEMENT OF ISSUE

12 Does the proposed operation of a 1080 square foot "Produce Stand" within the garage  
13 of the Christman residence, as conditioned by Staff and the Hearing Examiner, meet the  
14 requirements for a conditional use in the Commercial Agricultural zone?

### 15 IV. ANALYSIS

#### 16 A. The Produce Stand Is a Conditional Use In the Commercial Agriculture 17 Zone.

18 KCC 17.31.030 identifies conditional uses that are permitted in the Commercial  
19 Agricultural zone. Among the uses authorized as conditional uses in the Commercial  
20 Agricultural zone are "commercial activities associated with agriculture." KCC 17.31.030(3).  
21 The Produce Stand is such a conditional use and will be subordinate to primary agricultural  
22 uses in the zone. The Produce Stand will operate out of an existing detached garage on a 2.95  
23 acre parcel containing a single family residence. The Produce Stand will cater to a local  
24 clientele through selling fresh produce that is grown primarily in the greater Kittitas County  
25 and Yakima County region. Such sale of local produce will foment, rather than interfere with,

1 the primary agricultural uses that occur on larger parcels within the Commercial Agricultural  
2 zone.<sup>1</sup>

3 **B. The Produce Stand Meets the Criteria for Issuance of a CUP.**

4 The Hearing Examiner may recommend approval of the conditional use permit when  
5 the requirements of KCC 17.60A.010 have been met:

6 1. The proposed use is essential or desirable to the public  
7 convenience and not detrimental or injurious to the public health,  
8 peace, or safety or to the character of the surrounding  
9 neighborhood.

10 2. The proposed use at the proposed location will not be  
11 unreasonably detrimental to the economic welfare of the county  
12 and that it will not create excessive public cost for facilities and  
13 services by finding that: (a) The proposed use will be adequately  
14 serviced by existing facilities such as highways, roads, police and  
15 fire protection, irrigation and drainage structures, refuse disposal,  
16 water and sewers, and schools; or (b) The applicant shall provide  
17 such facilities; or (c) The proposed use will be of sufficient  
18 economic benefit to offset additional public costs or economic  
19 detriment.

20 3. The proposed use complies with relevant development  
21 standards and criteria for approval set forth in this title or other  
22 applicable provisions of Kittitas County Code.

23 4. The proposed use will mitigate material impacts of the  
24 development, whether environmental or otherwise.

25 5. The proposed use will ensure compatibility with existing  
26 neighboring land uses.

27 6. The proposed use is consistent with the intent and  
character of the zoning district in which it is located; and

7. For conditional uses outside of Urban Growth Areas, the  
Board shall determine that the proposed use: (a) Is consistent  
with the intent, goals, policies, and objectives of the Kittitas  
County Comprehensive Plan, including the policies of Chapter 8,  
Rural and Resource Lands; (b) Preserves "rural character" as  
defined in the Growth Management Act (RCW 36.7A.030(15);

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<sup>1</sup> The Produce Stand use also appears to fall within the scope of KCC 17.31.030(10), which authorizes as a conditional use in the Commercial Agriculture zone: "home occupations which involve outdoor work or activities or which produce noise." "Commercial activity associated with agriculture" would appear, however, to be a more accurate and specific description of the proposed use.

1 (c) Requires only rural government services; and (d) Does not  
2 compromise the long term viability of designated resource lands.

3 In approving the proposed use, the Hearing Examiner may recommend and impose “such  
4 conditions as it deems necessary to protect the best interests of the surrounding property or  
5 neighborhood or the county as a whole.” KCC 17A.60A.020.

6 The Produce Stand, as conditioned by Staff and through the MDNS, satisfies all seven  
7 of the criteria set forth in KCC 17A.60A.010.

8 **1. The Produce Stand Is In the Public Interest, and Not Detrimental to  
9 Public Health, Peace, Safety, or the Neighborhood.**

10 In recent years, the Christmans have observed a growing demand in the region for fresh  
11 fruits and vegetables. The idea of purchasing fresh produce that is grown in the region, and  
12 delivered directly to the seller/consumer appeals to a large segment of the public. The success  
13 and growth of Thorp Fruit and Antique Mall is just one example of the increasing public desire  
14 to purchase fresh produce directly from a small-scale, low-intensity provider. The Produce  
15 Stand will provide competition, thus keeping keep produce prices low, and quality of service  
16 and produce high, for the benefit of the consumer.

17 The Produce Stand is situated on a 2.95 acre lot, and will be operated out of the existing  
18 1080 square foot detached garage that has previously served the residence. The parcel upon  
19 which the Produce Stand will operate is on the Thorp Highway, just a few hundred feet off of  
20 the exit from I-90, albeit it not visible from I-90. The size and location of the parcel where the  
21 Produce Stand will operate is not conducive to commercial agricultural growing operations and  
22 has the unique characteristic of being in close proximity to the I-90 corridor and the Thorp exit,  
23 and also on the way to/from residential communities, such as Sunlight Waters.

24 The Christmans expect that most of their customers will be persons who are already  
25 utilizing the existing roads en route to residences, or on the way to/from getting fuel at the  
26 Thorp ARCO Fuel Station. The Produce Stand will be low impact use that compliments the  
27 local agricultural industry and promotes and encourages agriculture. The conditions proposed  
by the Christmans, together with those recommended by the Staff, ensure that the Produce

1 Stand will be operated in a manner that is not detrimental to the peace, safety, health or  
2 neighborhood.

3 **2. The Produce Stand Will Not Be Unreasonably Detrimental to the**  
4 **Economic Welfare of the County.**

5 The proposed use at the proposed location will not be unreasonably detrimental to the  
6 economic welfare of the County; rather, it will increase economic competition and ultimately  
7 generate revenue for the County. The Produce Stand will not create excessive public cost for  
8 facilities and services because it is already adequately serviced by existing facilities such as  
9 highways, roads, police and fire protection, refuse disposal, water and sewers, and schools.  
10 Customers patronizing the Produce Stand are most likely to be people who are already in the  
11 area and using the existing infrastructure network for other purposes. The Produce Stand use  
12 does not generate the need for additional police or fire protection; no new structures are being  
13 created and no activities are being conducted that increase the risk or likelihood for new  
14 services. The Produce Stand will be operated in an existing structure by the residents who  
15 reside on-site. Few, if any, additional employees are anticipated. The Produce Stand is bearing  
16 the costs of, and providing ADA-approved sanicans with handwashing stations. All potable  
17 water supplies can be provided by the Produce Stand under contract with a water purveyor.  
18 The State Department of Health, however, has indicated that utilizing the existing domestic  
19 well for washing the produce prior to sale is acceptable, without necessitating conversion of the  
20 well to a Group B water system. (See attached email from Mr. Mau, dated June 14, 2013).  
21 Existing space enables parking for up to six vehicles. The Produce Stand will be required to  
22 comply with all applicable laws regarding emergency access, health and safety, and land use.  
23 Any de minimus impacts of the Produce Stand will be far offset by economic benefit and  
24 convenience to the community.

25 **3. The Produce Stand Complies with Relevant Development Standards**  
26 **and Criteria.**

27 Appellant incorporates and relies upon the analysis set forth at pages 2-4 of the Staff  
report pertaining to the consistency of the Produce Stand with the County's Code. The Produce

1 Stand, as a “commercial activity supporting agriculture,” is authorized in the Commercial  
2 Agriculture zone as a conditional use. The Produce Stand will comply with all applicable  
3 development standards and codes, and is consistent with relevant provisions of the County’s  
4 Development Code. The use will be subordinate to surrounding agriculture uses. The Produce  
5 Stand will not be able to put up signage or improvements without complying with all applicable  
6 provisions of the County Code that govern such uses. The Produce Stand will be subject to,  
7 and comply with, all provisions of County Code and applicable law.

8 **4. The Produce Stand Will Mitigate Its Material Impacts.**

9 The Produce Stand will produce nominal impacts, and all of these impacts have been  
10 identified in the Staff Report and MDNS, and will be mitigated as required therein. The  
11 Christmans rely upon and incorporate the analysis of the Staff Report.

12 **5. The Produce Stand Will Be Compatible with Existing Neighboring  
13 Land Uses.**

14 The Produce Stand is situated upon a small parcel with a single family residence and  
15 associated improvements; the parcel, as such, is not conducive to agricultural production.  
16 Additionally, the subject parcel is located on the Thorp Highway, just several hundred feet off  
17 of the Thorp Exit on I-90. The Produce Stand will be conducted within the existing detached  
18 garage, and parking will be provided on site within the existing developed area. The Produce  
19 Stand operations will be conducted entirely on the already developed 2.95 acre parcels fronting  
20 the Thorp Highway; as such, the use will neither be incompatible with neighboring commercial  
21 agricultural uses, nor reduce the amount of land available for such purposes.

22 Any impact of the Produce Stand is likely to be felt most by the owners or the  
23 immediately adjacent agricultural property. Mr. and Mrs. Dyk own or farm these numerous  
24 acres immediately surrounding the Produce Stand parcel, and they are in support of the Produce  
25 Stand conditional use permit. (See Dyk Comment Letter, CR #11).

1                                   **6. The Produce Stand Is Consistent with the Intent and Character of**  
2                                   **the Commercial Agriculture Area.**

3                                   The Produce Stand will operate entirely within the detached garage that is already  
4                                   situated on the 2.95 acre parcel upon which it will be situated. The subject parcel is on the  
5                                   Thorp Highway. The Produce Stand will be selling fresh, local produce—with virtually all of  
6                                   the produce during the peak season being grown locally by people with orchards, farms, or  
7                                   gardens in Kittitas County. The sale of fresh produce—primarily locally grown or supplied—  
8                                   is supportive of, and consistent with, the commercial agricultural area within which it will  
9                                   operate. The marketing and sale of fresh fruits and vegetables, and some associated  
10                                   convenience supplies, in an area that is easily accessible and visible from I-90, will result in the  
11                                   greater recognition, sale, and appreciation of Kittitas County commercial agricultural.

12                                   **7. The Produce Stand Is Consistent with the Kittitas County**  
13                                   **Comprehensive Plan, Preserves "Rural Character," Requires Only**  
14                                   **Rural Government Services, and Does Not Compromise Long Term**  
15                                   **Viability of Designated Resource Lands.**

16                                   The small-scale Produce Stand will have a “mom and pop” feel, enhancing the rural  
17                                   character of the area. As discussed previously, the Produce Stand does not require any new  
18                                   government services and indeed is unlikely to utilize even more rural government services than  
19                                   have been being utilized by the Christmans, as the occupants of the 2.95 acre parcel. The  
20                                   Produce Stand will be operated on a self-contained, small parcel, close to I-90, and abutting the  
21                                   Thorp Highway; it does not present a threat to the long term viability of any adjacent properties  
22                                   or any designated resource lands in the area. Notably, Mr. Dyk, who owns or farms all of the  
23                                   property surrounding the 2.95 acre Produce Stand parcel, has submitted a comment letter *in*  
24                                   *support* of the Produce Stand. (CR #11). The Produce Stand will complement the surrounding  
25                                   uses. Appellant’s incorporate and rely upon the County’s analysis at pages 2-4 of its Staff  
26                                   Report for further support of the consistency of the Produce Stand with the County’s  
27                                   Comprehensive Plan.



1           **C.     The CUP May Be Subject to Modification, Limitation, or Revocation In the**  
2           **Future.**

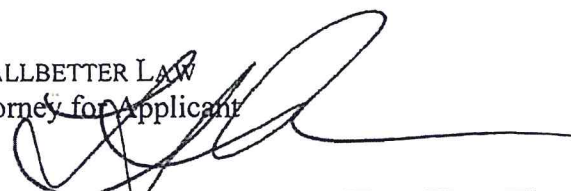
3           The Produce Stand, as proposed and conditioned, will meet the criteria for issuance of a  
4 conditional use permit. As with any use of land, the present is not necessarily a predictor of  
5 the future. In the event that the use as proposed and approved results in impacts that are not  
6 contemplated at the time of application, the County retains the authority to revoke or  
7 additionally limit the CUP after it has been granted. KCC 17.60A.100. Moreover, any change,  
8 enlargement or alteration of the Produce Stand approved in the CUP will require review by the  
9 Board of County Commissioners, and new additional conditions could be imposed if required.  
10 KCC 17.60A.095.

11                               **V.     CONCLUSION**

12           The Christmans' Produce Stand meets the criteria of KCC 17.60A.010 for issuance of a  
13 conditional use permit. The Christmans request that the Hearing Examiner recommend  
14 issuance of the Conditional Use Permit for the Produce Stand on the conditions set forth in the  
15 Staff Report and such additional conditions as the Hearing Examiner may deem prudent and  
16 justified.

17           DATED this 24th day of June, 2013.

18                                       SHALLBETTER LAW  
19                                       Attorney for Applicant

20           By   
21                                       Traci L. Shallbetter  
22                                       WSBA #29712

**Traci Shallbetter**

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**Subject:** FW: question well water

**From:** Holly Duncan  
**Sent:** Tuesday, June 18, 2013 2:36 PM  
**To:** 'tckchristman@fairpoint.net'  
**Subject:** FW: question

*Attachment to CUP  
Hearing Brief*

fyi

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**From:** Mau, Russell E (DOH) [<mailto:Russell.Mau@DOH.WA.GOV>]  
**Sent:** Friday, June 14, 2013 9:39 AM  
**To:** Holly Duncan  
**Subject:** RE: question

Holly:

A water system is evaluated based on number of residents, employees and customers (who use or contact the actual water system – such as toilets, drinking fountains, showers). Washing of fruit or bottling water or other uses of water in a manufacturing process is regulated by other agencies/entities.

So, for a local fruit stand, we would evaluate whether they are Group A or Group B, based on how many employees and whether they have a water system (do the employees have access to toilets or drinking fountains or sinks for washing hands).

We have seen local fruit stands provide porta-potties and these “portable” hygiene stations to try to avoid becoming a water system. At that point, it falls under your other regulatory “hats” – does Kittitas County approve a roadside stand that does not have any water facilities.

If they are having sinks and toilets, just for the employees, then it would be a Group B (unless, somehow, they have the “magic” number of something like more than 25 employees for more than so many days a year).

Thanks,

**Russell E. Mau, Ph.D., P.E.**

Regional Engineer  
Department of Health, Office of Drinking Water  
16201 East Indiana Avenue, Suite 1500, Spokane Valley, WA 99216  
Desk: 509-329-2116  
Fax: 509-329-2104

[Russell.Mau@DOH.WA.GOV](mailto:Russell.Mau@DOH.WA.GOV)

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**From:** Holly Duncan [<mailto:holly.duncan@co.kittitas.wa.us>]  
**Sent:** Friday, June 14, 2013 9:28 AM  
**To:** Mau, Russell E (DOH)  
**Subject:** question

Hello Russell,

Some people here that have started a local fruit stand have been told that they need to get their water system approved just for washing the fruit and vegetables to sell. Is this actually the case and if so, I was thinking a Group B system? Would that be correct?

Holly

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