

ISLAND COUNTY HEARING EXAMINER

RE: Appeal) File No. 352-13 APP
Appellant: Elizabeth Snyder) FINDINGS OF FACT
) CONCLUSIONS OF LAW
) AND DECISION
)

SUMMARY OF APPEAL AND DECISION

APPEAL: Elizabeth Snyder has filed an Appeal of the Planning Director's Site Plan Approval of SPR 293/13. SPR 293/13 granted Site Plan Approval for construction of a 9,000 square foot, three-story building to house a winery, storage facility, and a kitchen and wine tasting room, including parking for approximately 50 vehicles, on a 22.1-acre parcel, zoned Commercial Agriculture, and addressed as 4361 Witter Road, Langley, Washington.

The basis of the Appeal is that the Planning Director erred in allowing a primary access to the winery off of View Road, instead of requiring the primary access off of Wilkinson Road.

DECISION: The Planning Director had the authority to modify the requirement that access to the proposed winery building be off of a county collector, in this case, Wilkinson Road. The Planning Director properly exercised the authority to modify, and the Decision of the Planning Director granting Site Plan Review Approval is hereby upheld, without modification.

The Hearing Examiner does not have the authority to hear all of the other issues raised by the Parties during the pendency of this Appeal as they were not properly before the Hearing Examiner. The only issues before the Hearing which can be resolved in a hearing on this Appeal are the issues set forth in the Comprehensive Statement of Appeal filed by the Appellant.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearings on February 14 and 20, 2014.

I.

PRELIMINARY INFORMATION

Appellant: Elizabeth Snyder

Property Location: 4361 Witter Road
Langley, Washington 98260

Assessor's Parcel No. R32902-045-4870

Notice to Appeal to Applicant: November 21, 2013

Date of Appeal: November 19, 2013

Date of Comprehensive Statement: December 9, 2013

Notice of Hearing Scheduled: December 12, 2013

Hearing Dates: February 14 and 20, 2014

Exhibit Log:

BINDER 1 OF 3

Tab 1 – Staff Report

1. Staff Appeal Response
2. Staff Report (copy of report in exhibit 57)
3. Party of Record letter advising of Staff Report

Tab 2 – Site Data

4. Site Data, no date

Tab 3 – Combined Application History

297/12 PRE – Pre-Application

5. Pre-application Conference application, received 11/1/12
6. Site plan, received 11/1/12
7. Notice of Pre-application meeting, dated 11/8/12
8. Planning Department Comments, dated 11/28/12
9. Pre-application meeting sign-in, dated 11/29/12

10. Planning department Addendum & Correction, dated 8/21/13

Environmental (SEPA) Application 114/13 ENV

Application

11. Copy of Approved Application for Access to a County Right of Way, dated 2/15/13
12. Drainage Narrative, received 4/11/13
13. Master Land Development Application, received 4/11/13
14. Winery and Tasting Room Floor Plans, received 4/11/13
15. Environmental Checklist, received 4/11/13

Agency Comments

16. Memo from Bill Poss to Jason Johnson, dated 11/29/12
17. Memo from Bill Poss to Jason Johnson, dated 4/24/13
18. Memo from Aneta Hupfauer to Jason Johnson, dated 5/7/13
19. Memo from Bill Poss to Jason Johnson, dated 6/7/13
20. E-mail from Tamra Patterson to Jason Johnson, dated 6/10/13
21. Administrative Approval with Conditions for Clearing and Grading Permit 123/13 CGP, signed 6/10/13
22. E-mail from Bill Poss to Jason Johnson re: TEM 179/13, dated 7/15/13

Notices

23. Routing sheet from Jason Johnson, no date
24. Notice of complete application from Virginia Shaddy for Jason Johnson, dated 4/11/13
25. Notice of Application to Whidbey News Times for posting, no date
26. Affidavit of posting, received 4/22/13
27. Affidavit of publication, received 4/22/13

Public Comments

28. Facsimile from Linda Eckhart to Jason Johnson, received 4/30/13
29. Facsimile from Linda Eckhart to Jason Johnson, received 4/30/13
30. Letter from Carl Comfort to Neighbors, received 5/1/13
31. Letter from Linda Eckhart to Jason Johnson, received 5/1/13
32. Facsimile from Thomas Eckhart to Jason Johnson, dated 5/1/13
33. Letter from Linda Allen to Jason Johnson, received 7/16/13
34. E-mail from Michael Holota to Jason Johnson, dated 7/16/13
35. E-mail from Michael Holota to Jason Johnson, dated 7/16/13
36. E-mail from Michael Holota to Jason Johnson, dated 7/16/13
37. E-mail from Michael Holota to Jason Johnson, dated 7/16/13
38. Email from Mary Walsh to Jason Johnson, dated 7/24/13
39. E-mail from Mary Walsh to Jason Johnson, dated 7/29/13
40. Letter from Neighborhood Residents to Rita and Carl Comfort, received 8/28/13

Correspondence

41. Documents submitted by applicant, no date
 - a. Chapter 17.22 – Development Standards – Wineries, no date
 - b. Washington RCW, no date
42. WAC 197-11-060 Content of Environmental Review, printed 4/17/13
43. WAC 197-11-055 Timing of the SEPA process, printed 4/17/13
44. WAC 197-11-080 Incomplete or unavailable information, printed 4/17/13
45. WAC 197-11-090 Supporting documents, printed 4/17/13
46. WAC 197-11-100 Information required of applicants, printed 4/17/13
47. Letter to Tamra Patterson from Sarah Martin, received 6/6/13

48. Letter to Jason Johnson from Geoff Tapert, received 6/6/13

Staff Decision

49. Staff Report & Decision

50. Copy of Winery Floor Plans, received 6/6/13

Site Plan Review Application 293/13 SPR

Application

51. Copy of Application submitted for ENV 114/13, received 4/11/13

Correspondence

52. Pre-application Planning Department Comments, dated 11/28/12

53. E-mail from Carl Comfort to David Wechner, dated 9/26/13

54. E-mail from Carl Comfort to David Wechner, dated 10/30/13

55. Fire Protection Systems, no date

Decision

56. Proposed site plan, winery & tasting room permit set revisions, dated 5/29/13

57. Staff report and decision, dated 11/5/13

58. Memo from David Wechner to file 293/13 SPR, dated 11/14/13

59. Site plan, received 11/21/13

BINDER 2 OF 3

Tab 4 – Appeal Information

60. Appeal request submitted by Elizabeth Snyder, received 11/19/13

61. Acknowledgement of appeal, dated 11/20/13

62. Notice to Carl and Rita Comfort of request for appeal, dated 11/21/13

63. Request for extension from Elizabeth Snyder, received 12/02/13

64. Response to request for extension of time, dated 12/3/13

65. Comprehensive Statement of Appeal, received 12/9/13

66. Memo from Steve Erickson to Michael Bobbink, 12/10/13

67. Notice of Hearing schedule, dated 12/12/13

68. E-mail from Paula Bradshaw to Steve Erickson, dated 12/19/13

69. Request for Dismissal from Larry Kwarsick to Michael Bobbink, dated 12/23/13

70. Request to move the hearing from Steve Erickson to Michael Bobbink, dated 12/23/13

71. Memo from Michael Bobbink to Steve Erickson and Larry Kwarsick, dated 12/23/13

72. Memo from Michael Bobbink to Steve Erickson and Larry Kwarsick, dated 1/2/14.

73. Notice of Hearing re-schedule to all parties of record, dated 1/15/14

74. Neighbors' Hearing Brief to Hearing Examiner, received 1/21/14

75. Neighbors' Motion to strike & exclude new issues, received 1/21/14

76. Concerned View Road Neighbors response to Comforts' motion to dismiss, received 1/21/14

77. Hearing Brief from Larry Kwarsick to Michael Bobbink, received 1/24/14

78. Memo from Steve Erickson to Michael Bobbink, received 1/27/14

79. E-mail from Carl Comfort to David Wechner dated 1/14/14, received 1/29/14

BINDER 3 OF 3

Tab 5 – Additional Appeal Information after binder to Hearing Examiner

80. E-mail from Carl Comfort to Mark Racicot, received 1/28/14

81. E-mail from Carl Comfort to BOCC, David Wechner & Virginia Shaddy, dated 1/30/14
82. E-mail from Paula Bradshaw to Larry Kwarsick, dated 1/30/14
83. E-mail from William O'Brien to Virginia Shaddy, dated 1/30/14
84. E-mail from Mark Racicot to BOCC, David Wechner & Virginia Shaddy, dated 1/30/14
85. Memorandum from Michael Bobbink to Steve Erickson, Larry Kwarsick and ICPCD, dated 1/31/14
86. E-mail from Shelley Brickel to Virginia Shaddy, dated 2/1/14
87. E-mail from Carrie McLachlan to Virginia Shaddy, dated 2/2/14
88. Memorandum from Michael Bobbink to Steve Erickson, Larry Kwarsick, ICPCD, dated 2/3/14
89. Neighbors' reply to staff report from Steve Erickson, received 2/4/14
90. Neighbors' motion to strike and exclude Comforts' Hearing Brief, received 2/4/14
91. Concerned View Road Neighbors response to Comfort's Hearing brief, received 2/4/14
92. E-mail from David Wechner to Paula Bradshaw, dated 2/4/14
93. Letter from Karen and Jack Krug to David Wechner, dated 2/3/14, received 2/4/14
94. Letter from Crispin T. Roberts & Molly Macleod-Roberts to Dave Wechner, dated 2/4/14
95. Concerned View Road Neighbors 2nd Prehearing Memorandum, received 2/4/14
96. Response to the Planning Director's response to the appeal and dismissal request from Larry Kwarsick, received 2/6/14
97. Notice of Publication from Whidbey News Times, received 2/10/14
98. E-mail from Steve Erickson to Virginia Shaddy for Michael Bobbink, received 2/12/14
99. E-mail to Larry Kwarsick & Dave Wechner on behalf of Michael Bobbink, received 2/12/14
100. E-mail from Dave Wechner to Virginia Shaddy for Michael Bobbink , received 2/12/14
101. E-mail from Larry Kwarsick to Virginia Shaddy for Michael Bobbink, received 2/12/14
102. E-mail to Larry Kwarsick, Steve Erickson, David Wechner from Virginia Shaddy for Michael Bobbink, sent 2/12/14
103. Memorandum and attachments from Dave Wechner to Michael Bobbink, received 2/13/14
104. E-mail to Larry Kwarsick, Steve Erickson, David Wechner from Virginia Shaddy on behalf of Michael Bobbink, sent 2/13/14
105. E-mail from Larry Kwarsick to Virginia Shaddy, Steve Erickson, David Wechner & Carl Comfort, received 2/13/14
106. E-mail from Steve Erickson to Virginia Shaddy, Larry Kwarsick, & David Wechner, received 2/13/14

Tab 6 – Appeal Information received during Hearing

107. Letter to Michael Bobbink from Carla & Michael Schork in support of Winery, received 2/14/14
108. Group U – Agricultural Buildings Appendix C, submitted by Dave Wechner, received 2/14/14

109. Community Meeting recording and notes submitted by Carl Comfort, received 2/14/14
110. Concerned View Road Neighbors 3rd Prehearing Memorandum from Steve Erickson to Michael Bobbink, received via e-mail 2/19/14, hard copy received 2/20/14
111. Language to clarify winery tasting room memorandum submitted by Dave Wechner, received 2/20/14
112. Addendum 10, submitted by Steve Erickson, re: part of statement of appeal, received 2/20/14
113. Pictures 1 through 10 of moving trucks and cement trucks on View Road submitted by Mary Walsh, received 2/20/14
114. Two page typed document to Michael Bobbink from Carl Comfort re: additional information to be considered for restriction to occupancy, received 2/20/14
115. E-mail to Jason Johnson from Carl Comfort re: Winery CZI and county code from Walla Walla, Chelan and Klickitat, dated 5/9/13, received 2/20/14
116. Pictures of View Rd submitted by Mary Walsh, received 2/20/14
117. List of Neighbors unable to attend submitted by Mary Walsh, received 2/20/14
118. E-mail from Carrie J. McLachlan re: concerns regarding plans for Comfort Winery, dated 2/19/14
119. Letter from Heath Gunn to Michael Bobbink, re: the hearing and the Comfort Farm Winery, dated 2/20/14
120. Letter from Lori Cavender with Ryan's House for Youth to Michael Bobbink re: their support for Comfort Winery, dated 2/20/14
121. Letter from Larry Kwarsick to Michael Bobbink re: decision and Hearing Examiner's role, received 2/26/14
122. Concerned View Road Neighbors Post Hearing Memorandum from Steve Erickson to Michael Bobbink dated 2/28/14
123. E-mail from Thomas Kramer to Michael Bobbink re: the hearing regarding Comfort farms, dated 2/28/14

HEARING TESTIMONY

Larry Kwarsick
Sound Planning
Box 581
Langley, WA 98260

Carl Comfort
4361 Witter Road
Langley, WA 98260

David Wechner
Island County Planning & Community Development
PO Box 5000
Coupeville, WA 98239

Carla Schork
PO Box 448
Clinton, WA 98236

Heath Gunn
5904 Maxwelton Rd #328
Langley, WA 98260

Vincent Nattress
5574 Bayview Road
Langley, WA 98260

Bill O'Brien
4449 Belle Isle Street
Langley, WA 98260

Andy Griffin
Island County Planning & Community Development
PO Box 5000
Coupeville, WA 98239

Bill Poss
Island County Public Works
PO Box 5000
Coupeville, WA 98239

Karen Krug
5881 Maxwelton Rd.
Langley, WA 98260

Tom Kramer
PO Box 638
Langley, WA 98260

Steve Erickson
Box 53
Langley, WA 98260

Mary Walsh
5170 View Road
Langley, WA 98260

Dan Richman
5039 View Road
Langley, WA 98260

Betty Snyder
5113 View Road
Langley, WA 98260

Linda Perkins
5095 View Road
Langley, WA 98260

Fred Lundahl
5167 View Road
Langley, WA 98260

Roberta Happel
4397 Bellellen Way
Langley, WA 98260

II.

On November 5, 2013, the Director of Island County Planning and Community Development [Planning] issued a Decision granting Type II Site Plan Approval to SPR 293/13, subject to 31 Conditions of Approval [set forth on pages 13 thru 15 of the Decision].

On November 19, 2013, Elizabeth Snyder filed an Appeal on behalf of the "Concerned Neighbors of View Road," [Concerned Neighbors] appealing the Planning Director's Decision. A timely Comprehensive Statement of Appeal, after an extension approved by the Hearing Examiner, was filed on December 9, 2013. The Appeal and Comprehensive Statement of Appeal were timely and this matter is properly before the Island County Hearing Examiner.

The Snyder Appeal, when reduced to the basic issue raised in the Comprehensive Statement, is an Appeal of Condition B-2 of the Site Plan Approval. This Condition reads as follows:

B. Engineering/Public Works Conditions

2. Site plans must be modified to show the location and dimensions of a primary access road, and designation of secondary access. Appropriate signage or other designation to denote the primary access shall be shown

on the final site plan. Primary access for the winery use must be from one of two options listed below:

- a. (Option 1) The final site plan must include a *primary* access for the winery from Wilkinson Road, a County Collector Road adjacent to the western boundary of the parcel; or,
- b. (Option 2) The final site plan must include a *primary* access for the winery from View Road at a point approximately 350 feet east of Wilkinson Road where the subject property encompasses both sides of the road.

The Appellants, in their Comprehensive Statement and supporting briefs, argue that ICC 17.03.180.2.F require access to the winery to be off Wilkinson Road; and that this access requirement is mandatory and cannot be modified or waived by the Director. Concerned Neighbors also argues that providing access off of View Road either in the current approved commercial access or the access option allowed by the Planning Director in Condition B-2 above is incompatible with the View Road neighborhood and therefore does not meet the requirements for Site Plan Approval.

The Appellants raise numerous other issues in their briefs and written and testimonial comments, but the access road issue was the only one cited in the Comprehensive Statement, setting forth their grounds for Appeal.

III.

There were no Appeals of the SEPA Determination of Non-Significance. No other party appealed the Planning Director's Decision, including the Applicants, Paul and Rita Comfort.

IV.

Paul and Rita Comfort purchased the subject 22.18 acre parcel in 2006. The previous owner had used the parcel for agricultural purposes for a number of years prior to that. At the time Paul and Rita Comfort purchased the parcel, and currently, the parcel contains approximately four acres of mature grape vines, with the remaining of the parcel containing a residence, garage, barn, and mostly open fields. At the time of

purchase, the vineyard was in the Open Space Tax Program. The property has a Farm Management Plan.

One of Paul and Rita Comfort's goals was to use the property for winery purposes. Their investigation after purchase identified the fact that wineries were a permitted use in the Commercial Agriculture zone. On May 14, 2010, a Zoning Map Amendment, CAA 025/10, rezoned the property from Rural to Commercial Agriculture. The Approval of the Zoning Map Amendment was not appealed.

Also in 2010, Island County approved the conversion of an existing 792 square foot garage for use as a wine production/processing facility, including a small tasting room. These improvements were made as a Type I Decision because the proposed use was listed as a Permitted Use in the Commercial Agriculture zone, per ICC 17.03.100.

On February 14, 2013, Mr. and Mrs. Comfort were granted a Residential Access Permit, affirming access to the residence from Witter Road, and a Commercial Access Permit, allowing a commercial access to the northern portion of the property off of View Road.

Mr. and Mrs. Comfort also obtained a Clearing and Grading Permit on June 10, 2013, and an Amendment to that Permit on July 11, 2013, allowing clearing and grading activity for the commercial access, a parking area, and a site for future construction of a new winery building. These permits were all granted based on the understanding that, as set forth in the chart in ICC 17.03.035.A, and under the Permitted Use Section for the Commercial Agriculture zone, set forth in ICC 17.03.100.A, a winery on the property was a permitted use.

Island County received an Application from Mr. and Mrs. Comfort, and an associated SEPA Checklist on April 11, 2013. Notice was given of the pending SEPA Threshold Determination and a comment period was provided between April 18 and

May 2, 2013. Since Planning was still operating under the assumption that the proposed winery building, with storage, tasting room, and a commercial kitchen associated with the tasting room, were uses permitted outright, no Notice of Application was published, nor sent to surrounding property owners, other than the required SEPA notices.

The SEPA Checklist submitted with the Master Application on April 11, 2013, identified the project as construction of a new larger winery "... with sufficient room to allow for future expansion of a B and B, Rural Event Center, and tasting room. We also plan to have two rooms for farm workers."

The SEPA Checklist also noted that the building would be constructed adjacent to the current winery and tasting room, but will be accessed from the new commercial access off of View Road. This is the commercial access that was approved on February 14, 2013.

The Master Application was deemed complete and Planning initiated the SEPA Notice and Threshold Determination process.

On July 31, 2013, Planning issued a SEPA Threshold Determination of Environmental Non-Significance [DNS] for the proposed winery building. The DNS issued by Planning noted that the SEPA Review would be a phased review and any future Land Use proposal for a Rural Event Center, as defined by the Island County Code, would require further SEPA Review. While the SEPA document indicated a Determination of no probable significant adverse impact on the environment, it did contain four Conditions of Approval which, apparently, would actually make it a Mitigated Determination of Non-Significance.

V.

After Planning issued the SEPA Determination described above, concerns from neighboring property owners in the View Road area were received. On August 28,

2013, Planning received a letter addressed to Rita and Carl Comfort from approximately ten View Road residences expressing strong concern about a potential future Rural Event Center on the property and arguing that the proposed winery was subject to ICC 17.03.180.T as a Small-Scale Recreation and Tourist Use.

On September 25, 2013, the Planning Director notified Carl and Rita Comfort that Planning had determined ICC 17.03.180(T) required the winery proposal, itself, to be evaluated as a Small-Scale Recreation and Tourist Use and comply with the Development Standards in that Section. This communication informed Mr. and Mrs. Comfort that a Type II Site Plan Review was required, but that the current Application form was deemed sufficient, and that no extra fee would be charged. This was the first formal notice to Mr. and Mrs. Comfort since their purchase of the property in 2006, that the winery use could not be permitted outright, but would instead require a Type II Site Plan Approval.

It does not appear that Planning published or sent notice to neighboring property owners regarding the newly accepted Type II Site Plan Approval Application for the winery.

On November 28, 2012, Planning sent a letter to Mr. and Mrs. Comfort which described the current proposed project as follows:

- Construct a new and larger building to accommodate an existing winery and tasting room.
- Construct a dwelling unit for seasonal farm laborer
- Construct four to six rooms for a bed and breakfast inn

This letter posed a number of questions to Mr. and Mrs. Comfort about their plans. It also informed them of the type of review that would be needed for what Planning understood to be the Applicants' proposal, including the requirement for a Type II Conditional Use Permit [Site Plan Review] for the Bed and Breakfast Inn. A Pre-Application Conference was held the next day. Ultimately, the Comforts chose not to pursue the needed permit for the Bed and Breakfast Inn, but have sized the proposed building to include one in the future. They appear to assume, perhaps mistakenly, that

the winery building location is appropriate for future conditional uses, such as a Bed and Breakfast Inn, and perhaps a Rural Event Center.

On November 5, 2013, Planning approved the Type II Site Plan Review, allowing construction of a 9,000 square foot, three-story building to house a winery, storage facility, kitchen/tasting room, and parking for approximately 50 vehicles.

This Appeal by the Concerned View Road Neighbors followed.

VI.

Mr. and Mrs. Comfort did not appeal the Determination by Planning that a Type II Site Plan Review was required for construction of the new winery building and tasting room. The Comforts also did not appeal the November 5, 2013 Decision granting Type II Site Plan Approval to construct the new 9,000 square foot winery building, storage facility, and kitchen/tasting room, subject to conditions. The conditions included the identification of a primary access road, either off of Wilkinson Road, a county collector road adjacent to the western boundary of the parcel; or a primary access road for the winery from View Road at a point approximately 300 feet east of Wilkinson Road where the subject property encompasses both sides of the road. This condition is set forth in its entirety as Condition B-2, above.

During this Appeal, Mr. and Mrs. Comfort have challenged both the determination that a Type II Site Plan Review Approval was required for the approved project, and Condition B-2, identifying and requiring a new primary access and internal private road to the new winery building. The Comforts would now like the Hearing Examiner to rule that the proposed use is permitted outright; that Site Plan Approval is not required; that ICC 17.03.180.T does not apply to a winery in the Commercial Agriculture Zone; and that they be allowed to use the existing approved Commercial Access for the winery and tasting room kitchen proposed.

VII.

During the Hearing process, the Hearing Examiner received extensive written materials, as well as testimony, raising concerns by the Concerned Neighbors about the impacts of Temporary Use events which had taken place on the parcel, mainly in the form of wedding events, over the past year or so. These events were authorized by a Temporary Use Permit. Great concern was also raised about the potential future event center and the Appellants' fear that the Applicant was using this process to establish an event center surreptitiously.

The Hearing Examiner also heard extensive argument from Mr. and Mrs. Comfort, and their supporters, expressing the belief that the Comforts' proposal did not require Type II Site Plan Review, and that the current approved commercial access on the northern end of the property was sufficient and appropriate to access the winery, parking area, and tasting room, all of which they argued were uses permitted outright in the Commercial Agriculture zone.

VIII.

View Road has just less than 20 feet of paved surface, with no shoulders. It is a local access road, primarily serving approximately 15 residences, located at the north end of the Comfort's property and to the north. The View Road neighborhood itself is a Residential Area of More Intense Development [RAID]. The owners, or possibly occupants of approximately 10 residences located in the vicinity of the western end of the Comfort property are strongly opposed to Mr. Comfort's vision of possible future additional nonresidential uses of the property and winery building, including a Rural Event Center, and a Bed and Breakfast facility. The major concern raised by the Concerned View Road Neighbors centered around their perception that View Road is inadequate to properly serve the winery and tasting room, ongoing temporary events, such as weddings, and, especially, the use of the property, or View Road as access to, a Rural Event Center.

The Concerned Neighbors raised issues in regard to the Temporary Use events that had taken place on the parcel, including traffic and noise, and concerns that future

expansion would increase the impacts. Temporary Use events are held outside and have been held in the area of the property close to the View Road residential community. A future Rural Event Center would allow many of these events to be held inside, possibly reducing adverse impacts on the View Road Neighborhood.

The issue of Temporary Use events is not before the Hearing Examiner and the Hearing Examiner has no comment on whether or not these events have been unduly disruptive in regard to noise or traffic. The record contains clearly conflicting testimony about this issue. However, Temporary Use Event Permits are granted by the Planning Director and ongoing temporary events will require additional permits. The issues raised by the impacts of temporary events held to date can be considered part of the review of any new Temporary Use Permit sought.

IX.

The current small winery and tasting room, located in the garage structure, is used to process grapes grown onsite into wine for marketing, including marketing in the tasting room.

The new winery structure will mainly process grapes grown outside of Island County. Only a very small portion of grapes processed in the new winery will be grown onsite or within Island County.

View Road, in its current condition, is adequate to handle traffic associated with the proposed winery and associated tasting room. The already approved commercial access is also adequate to handle traffic associated with the proposed winery and tasting room.

The operation of a winery, in the size proposed, and a moderate and appropriate sized tasting room would result in minimal additional impacts to the surrounding community and would be compatible with existing uses in the area.

While the Hearing Examiner believes that the traffic impacts alleged by Concerned Neighbors are overstated, the Hearing Examiner also recognizes that using the proposed winery building for additional uses, such as a Bed and Breakfast Inn, a Rural Event Center, or Temporary Uses, has the potential, at some scale, to be incompatible with the surrounding rural residential area [a RAID or Rural Area of Intense Development] accessed by View Road. This could be especially true if all traffic for temporary uses, and/or later approved Conditional Uses, accessed the parking area and winery building through the existing commercial access point.

X.

The use of either of the primary access alternatives [Wilkinson Road or off of View Road, 375-feet east of Wilkinson Road] would provide for a traffic circulation pattern serving the parking lot and proposed winery with only insignificant additional traffic impacts on the Appellants' View Road community.

XI.

A requirement that the Applicants access an expanded winery and parking area off of Wilkinson Road will require construction of an access road through the existing vineyard. While the Applicants may have overstated the impact on the vineyard from a requirement that they access the expanded winery and parking area from Wilkinson Road, such an access will result in a reduction in the size of the existing vineyard; the possible loss of mature producing vines; and the creation of an unnecessary long road through a commercial agricultural parcel to access the already constructed parking area and proposed winery location. The Appellants have suggested the existing vines could easily be replanted but have produced no evidence showing that replanting would be easy or successful.

The second option granted to the Applicants was for a primary access off of View Road, about 350 feet off of Wilkinson Road [Condition B-2(b) of the Planning Director's Decision, granting Site Plan Approval], which would leave the existing

vineyard undisturbed and reduce the portion of the parcel dedicated to a primary access road in order to reach the existing parking area and proposed winery location.

The use of a primary access point 350 feet off of Wilkinson Road, from View Road, into the north side of the Comforts' property, would eliminate virtually all of the adverse impacts from traffic on View Road residents. It would not pass any currently existing View Road residences and would access the Comfort's property at a point where they own the land on both sides of View Road; thereby, minimizing impacts on future development along View Road in the vicinity of the proposed access point. Use of the current commercial access point for primary access would increase the portion of the Comforts' property that could be dedicated to agricultural uses by decreasing the area on the property dedicated to roads.

Requiring access off of Wilkinson Road would, at a minimum, require an adequate holding area on the Comfort property abutting Wilkinson Road to allow a number of vehicles to pull off Wilkinson Road into a fenced road area, culminating in an electronic gate. The appropriate length of a holding area before reaching the mechanism which could operate an electronic gate would need to be determined by Island County Public Works. In order to protect the vineyard from deer, the gate, and the roadway leading up to the gate, would have to be deer proofed. This would cut an unknown number of rows of grapes between the Wilkinson Road right-of-way and an electronic gate into two sections. In addition to removing the grape plants from areas which would be outside the fence and gate, it appears that additional vines inside of the fence would have to be removed in order to allow farm machinery an adequate turning radius around the ends of the vine rows on either side of the fenced portion of the holding road [See Exhibit 123]. Since the vineyard area is by far the most commercially productive agricultural use on this property, requiring the construction of a road off of Wilkinson Road through the vineyard, will adversely, and unnecessarily, impact Commercial Agricultural Uses on the property.

XII.

The Planning Director's Conditions of Approval required that the parking area located off of View Road be buffered by 50-feet of landscaping. The 50-foot buffer and landscaping mitigates the concerns of View Road residents about the negative visual impacts of the parking area.

XIII.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

CONCLUSIONS OF LAW

I.

In its simplest form, the issue raised by this Appeal is whether or not the Planning Director erred by granting Site Plan Approval to the Comfort Winery and Tasting Room without requiring the access road to the winery to be from Wilkinson Road.

The Appellants argue that, based on ICC 17.03.180.T, access to the Comfort Winery must be off of Wilkinson Road only.

ICC 17.03.180.T reads in relevant parts to this Appeal as follows:

- T. Small-Scale Recreation and Tourist Uses.** Small-scale Recreational and Tourist Uses may conducted **in the Rural Zone** upon approval of a Site Plan pursuant to Chapter 16.15 ICC, processed as Type II or Type III decision pursuant to Chapter 16.19 ICC.
1. The following uses **illustrate** Small-Scale Recreation or Tourist Uses
 - d) **Wineries on Parcels ten (10) acres or larger in size that are zoned Commercial Agriculture or Rural Agriculture.**
 2. A Small-Scale Recreation or Tourist Use shall meet the land Use standards of this Chapter and the following requirements:

- a) A Site Plan is approved pursuant to Chapter 16.15 ICC;
- c) Only those Buildings or areas specifically approved by the County may be used in the conduct of the business;
- d) Parking shall be contained on-site and provided in conformance with this section;
- e) All activities shall be screened for [sic] the view of adjacent residential Uses and setback from all property lines at least fifty (50) feet;
- f) **All Small-Scale Recreation or Tourist Uses shall take primary access, in order of priority, off a County arterial, County Collector Road Highway, or State Highway;**
- g) Structures shall comply with the landscape, lighting, signage, site coverage, and Non-Residential design, landscape and screening guidelines set forth in this section; and
- h) For any Small-Scale Recreation or Tourist Use, the County shall impose such reasonable conditions as are found necessary to ensure that the activity or Use does not disrupt the character of any surrounding Permitted Uses.
[Emphasis added]

17.03.180.T starts out by stating Small-Scale Recreational and Tourist Uses may be conducted in the Rural Zone. However when illustrating examples of Small-Scale Recreational and Tourist Uses, 17.03.180.T.1(d), identifies wineries on parcels ten acres or larger in size that are zoned Commercial Agriculture or Rural Agriculture as an illustration of a Small-Scale Recreation or Tourist Use.

A review of the legislative history does not clarify why an example of a Small-Scale Recreational and Tourist Uses conducted in the Rural zone, includes wineries on parcels ten acres or larger in size that are zoned Commercial Agriculture. Commercial Agriculture is not in the Rural zone. Small-Scale Recreation and Tourist Uses are allowed in the Rural zone, subject to Site Plan Review [a Conditional Use]. They are not named as permitted, conditional, or prohibited uses in the Rural Agriculture or Commercial Agriculture zone. As unnamed uses, they would normally require a Zoning

Code Interpretation pursuant to 17.03.190 to determine if allowed in these zones, and to be classified.

To further complicate matters, **Tourist Use, Small-scale** is a defined term in ICC 17.03.040. The definition reads as follows:

Tourist Use, Small-scale:An isolated Use that relies on a rural location or setting and complies with the land Use standards set forth in ICC 17.03.180.

The use of the words "...rural location or setting ..." does not necessarily limit Small-scale, Tourist Uses to the Rural zone.

The Commercial Agriculture [CA] zone regulations are set forth in ICC 17.03.100.

In ICC 17.03.100.A, reads, in relevant part, as follows:

- A. **Permitted Uses.** Processed as Type I decisions pursuant to Chapter 16.19 ICC:
1. Accessory Uses;
 2. All uses which are necessary to the production, harvesting, sale or processing of agricultural products or have the principal purpose of carrying out or facilitating the practice of farming and farm activities;
 6. The growing, harvesting, sale and managing of agricultural products including horticulture and Livestock;
 9. Home Occupation;
 12. Temporary Uses;
 14. Winery;

The term winery is not defined in the Zoning Code. There are no development standards for wineries in ICC 17.03.180. If you accept ICC 17.03.180.T as a requirement for Site Plan Review for certain wineries in the Commercial Agriculture

zone, they would be required only if the parcel so zoned exceeded 10 acres. However, five acre parcels in the R, RA, or RF can potentially be rezoned to Commercial Agriculture pursuant to ICC 17.03.220.D.4, and wineries on these smaller parcels would be permitted outright even though impacts offsite are more likely the smaller the parcel is.

The vineyard itself is obviously a clear agricultural use; horticulture, or the growing of a crop. Agricultural processing is also a use permitted outright in the Agricultural zone. Agricultural Processing is defined in ICC 17.03.040, as follows:

Agricultural Processing: A facility located on a farm unit for the processing of farm crops grown in Island County. The building established for the processing facility shall not exceed:

- a) In the Commercial Agriculture Zone – 40,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devoted more than 40,000 square feet to the processing activities within another building supporting farm uses; or
- b) In the Rural Agriculture Zone – 5,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 5,000 square feet to the processing activities within another building supporting farm uses.

A commercial activity in conjunction with farm use includes, but is not limited to, processing facilities which convert harvested agricultural crops from their natural state into new products, i.e., drying, freezing, canning, etc. In addition, the preparation and storage of a product which includes significant amounts of agricultural crops not raised by the operator of the storage facility shall also be considered an agricultural processing facility.

The winery proposed by the Comforts will primarily produce wines made from grapes raised outside of Island County. For that reason, it is not an Agricultural Processing Facility, as defined above. An Agricultural Processing Facility, up to 40,000 square feet in the Commercial Agriculture zone, is permitted outright if it is limited to the processing of farm crops grown in Island County, whether grown by the owner of the processing facility or on other Island County farms.

To complicate matters, wineries are also listed as a permitted use separate from Agricultural Processing and listed as a permitted use in the Commercial Agricultural zone, even if they do not meet the definition of Agricultural Processing.

The Use Tables in ICC 17.03.035A identify Permitted and Conditional Uses in the Rural Agriculture and Commercial Agriculture zones. The purpose of the Use Charts is to simplify identification of permitted and conditional uses. Consistent with ICC 17.03.100, this Use Chart identifies Agricultural Products Processing; Agricultural Products -- Growing, Harvesting, Managing and Selling; and Winery as Permitted Uses in the Commercial Agriculture zone. This Use Chart does identify a winery as a Conditional Use in the Rural Agriculture zone. However, when one goes to the Rural Agricultural zoning section of the Zoning Ordinance, ICC 17.03.090, wineries are not listed as either Permitted or Conditional Uses.

The User Guide is described in ICC 17.03.030. This section does provide notice that in addition to determining if a specific use is allowed as a permitted or conditional use in an applicable zone classification, one must also check ICC 17.03.040 for the Definition of Special Terms, and also check the Land Use Standards of ICC 17.03.180 for Land Use Standards applicable to that use.

In regard to a winery in the Commercial Agriculture zone, a user would find both from the Use Tables and from the section of the Zoning Ordinance applying to Commercial Agriculture that wineries were permitted outright. One would find no special definition for winery in the Definition Section of the Zoning Ordinance. If one went to the Land Use Standards of ICC 17.03.180, one would find no specific Land Use Standards for wineries. The only way a person using the Code would identify potential Land Use Standards for wineries would be by reading the entirety of ICC 17.03.180, or otherwise somehow know that within the section setting forth Land Use Standards for Small- Scale, Recreation and Tourist Uses, [which are not even identified as a permitted or conditional use in the Commercial Agricultural zone, but are identified as a conditional use in the Rural zone]; that there was language identifying wineries on

parcels greater than ten acres in size in the Commercial Agriculture and Rural Agriculture zone, as illustrative of Small-Scale, Recreation Tourist Uses in the Rural zone.

Since the term winery is not defined in the Code, the basic rule of statutory interpretation requires the use of the common dictionary definition of the word. The Merriam-Webster Dictionary definition of winery is:

- The place where wine is made and
- A wine-making establishment

Wikipedia defines winery as follows:

A winery is a building or property that produces wine, or a business involved in the production of wine, such as a wine company. Besides wine-making equipment, larger wineries may also feature warehouses, bottling lines, laboratories, and large expansions of tanks known as tank farms.

The legislative history [see Exhibit 103] of ICC 17.03.180.T, Small-Scale, Recreational and Tourist Uses does not clarify the intent of the Board when adopting ICC 17.03.180.T.1.d, identifying wineries on parcels ten acres or larger in size that are zoned Commercial Agriculture or Rural Agriculture as an illustration of Small-Scale, Recreational and Tourist Uses that may be conducted in the Rural zone upon approval of a Site Plan. A winery in the Commercial Agriculture zone cannot be an illustration of a Small-Scale, Recreational or Tourist Use in the Rural zone.

Faced with this conundrum, the Planning Director chose to read the language of 17.03.180.T as a legislative determination that wineries on parcels ten acres or larger, in the Commercial Agriculture zone, are subject to the Small-Scale, Recreational and Tourist Uses Land Use Standards and require Site Plan Approval, pursuant to ICC 16.15. This would, of course, be an interpretation beyond argument if it were not worded as an illustration of Small-Scale, Recreational and Tourist Uses in the Rural zone, but instead stated simply that wineries on parcels ten acres or larger in size that are zoned Commercial Agriculture require Site Plan Review pursuant to Chapter 16.19

ICC, and are subject to the Small-Scale Recreation and Tourist Uses Standards of ICC 17.03.180.T.

Even if the Code read that way, such a section would directly conflict with the listing of a winery as an outright permitted use in the Commercial Agriculture zone. A clear conflict like this would be resolved by ICC 17.03.030.B which reads as follows:

- B. A user may wish to consult the Island County Comprehensive Plan to understand the applicable goals and policies. Under state law, the Zoning Code must be consistent with, and implement the Comprehensive Plan. Therefore, if a conflict between the Plan and the Zoning Code arises, the Plan will control. **Any other conflict will be resolved by applying the more stringent code standard.** [Emphasis added]

In the above hypothetical, the more stringent Code Standard would be the standard requiring that wineries on parcels over ten acres in the CA zone be processed pursuant to the Site Plan Review Requirements of ICC 16.15, and subject to the Development Standards of ICC 17.03.180.T

II.

If a satisfactory answer to the internal contradictions of the Code regarding wineries on Commercial Agricultural parcels cannot be resolved easily by interpreting the implementing regulations of the Zoning Ordinance, perhaps a resolution could be found by identifying conflicts between the Code as written and the Comprehensive Plan. ICC 17.03.030.B, set forth above, indicates a conflict between the Comprehensive Plan and the Zoning Ordinance are to be resolved in favor of the Comprehensive Plan.

III.

The Growth Management Act, RCW 36.78.030(2), requires protection of agricultural lands that have long-term commercial significance for agricultural production. The Island County Comprehensive Plan identifies designation criteria for county agricultural lands deemed to be of long-term commercial significance. These

designation criteria include a farm unit that is at least 40 acres in size and that was at least 50% comprised of prime soils. The Comfort parcel does not meet the designation criteria for agricultural lands of long-term commercial significance. [Island County Comprehensive Plan, page 1-106.]

A general discussion of the protection of resource lands is found in the Comprehensive Plan on page 1-47 thru 1-48. On page 1-47.1, there is a section, titled and reading, as follows:

Separating lands of long-term commercial significance from those more appropriate for rural agriculture designation.

The discussion of that subject on page 1-48 of the Comprehensive Plan indicates that to automatically place a farm in the Commercial Agriculture designation, the farm must be a block of at least 40 acres in size, owned by a single farmer; that 50% or more of the block is underlain by prime soils; that farms which do not qualify for designation as Commercial Agriculture **because of soil quality** may volunteer to be put in that classification. **"All other parcels of 20 acres or more, within the agricultural tax program should be treated as agricultural lands of local importance and designated Rural Agriculture."**

This language indicates that the Commercial Agriculture is not an appropriate designation for the Comfort property because it is less than 40 acres.

The Designation Criteria for the Commercial Agriculture zone in ICC 17.03.100 conflict with the Designation Criteria in the Comprehensive Plan by allowing a minimum parcel size of 20 acres in one ownership. The Comfort parcel meets this Designation Criteria.

These Zoning Ordinance Designation Criteria also require at least 25% of the lot be comprised of prime soils. The Comfort parcel does not meet this Designation Criteria because it contains approximately 7.5% prime soils.

Furthermore, ICC 17.03.100.H. appears to require that the Comfort parcel be converted to Rural Agriculture. It reads in relevant part, as follows:

- H. **Verification of Commercial Agriculture (CA Zone Classification.** Parcels classified CA **shall be converted to RA**, processed as a technical Type IV amendment pursuant to Chapter 16.19 ICC with no County permit fee charged the owner if: [Emphasis added]

....

2. The Parcel contains less than twenty-five percent (25%) prime soils;

However, irrespective of the language in both the Comprehensive Plan and the Commercial Agriculture Section of the Zoning Ordinance, ICC 17.03.100, allows reclassification of parcels to Commercial Agriculture for parcels as small as five acres, and with no reference to any of the Designation Criteria [see ICC 17.03.220.D.3], so long as it is classified in the open agriculture tax program or eligible for that program. Obviously, some work should be done to straighten out this quagmire of conflicts.

III.

The Appellant argues that, because of the language in ICC 17.03.180.T, the winery the Comforts propose on their Commercial Agriculture zoned property must meet the Development Standards for Small-Scale Recreation Tourist Uses. They argue, because of the word 'shall,' the requirement for primary access off of Wilkinson Road, a county arterial, is mandatory, and the Planning Director has no authority to modify this requirement.

However, the Land Use Standards for Small-Scale Recreation and Tourist Uses require approval of a Site Plan pursuant to Chapter 16.15 ICC.

The Criteria for Site Plan Approval are found in ICC 16.15.080. Paragraph A of this section requires approved site plans to meet the requirements of Title 17 ICC, pertaining to such development. Paragraph A.8 requires that, in regard to traffic and circulation, the Site Plan shall comply with the requirements of Chapter 17.03 ICC. At

this point, the Comforts would be required to comply with the requirement found in ICC 17.03.180.T.2.(f), that primary access to the winery be off Wilkinson Road, the county arterial, as argued by the Appellants.

However, this analysis does not take into account ICC 16.15.080.B. This section does give the approving authority the flexibility to modify applicable standards or criteria under certain circumstances. ICC 16.15.080.B reads in its entirety as follows:

- B. The above criteria shall be in addition to any standards or requirements established by applicable state and County laws or ordinances. They are not intended to be absolute in nature or to discourage creativity and innovation. The approving authority shall have the authority to modify the standards contained within these criteria when found necessary. However, said modifications shall be made only to ensure that the proposal is adapted to any unique or special site features and is Compatible with surrounding land Use; provided, that for proposals which require only administrative Site Plan approval, the Planning Director may waive and/or modify certain of the criteria for approval as appropriate to the limited scale and impact of the project.

This Section allows the Planning Director to modify specific standards "... to ensure that the proposal is adopted to any unique or special site features and is Compatible with surrounding land use; ..." and in the proviso above, additional authority for proposals which require only administrative Site Plan Approval [Type II], the power to waive or modify certain of the criteria for approval as appropriate to the limited scale and impact of the project.

Since compliance with the Standards of the Zoning Ordinance, ICC 17.03, is a criteria for Site Plan Approval, authority to modify or waive a standard of 17.03 applicable to a development is granted by 16.15.080.B under appropriate circumstances.

Although the Planning Director did indicate in the Decision granting Site Plan Approval that he was not invoking this section, he in fact did invoke this section when

he consciously decided to waive the requirement for an access off of Wilkinson Road through the existing mature grape vineyard, and to allow instead an access off of View Road, approximately 375 feet from Wilkinson Road, where the Applicant owned properties on both sides of the road.

The Planning Director's Decision should be upheld as an appropriate use of ICC 16.15.080.B. The Decision is consistent with the Comprehensive Plan Policies, favoring the protection of productive Agricultural Lands, whether zoned Commercial Agriculture or Rural Agriculture.

The Decision is also consistent with a number of stated purposes found in ICC 17.03.020, including the following:

- A. Implement the Comprehensive Plan of Island County;
- B. Achieve better use of Island County's land resources;
- D. Permit developments which will provide a desirable and stable economic environment consistent with the Rural character of Island County;
- E. Permit flexibility that will encourage a more creative approach in the development of land, while ensuring retention and use of the County's open spaces, farm and forest lands;
- I. Protect the fundamental and inalienable right of the residents of Island County to a healthy environment and the reasonable use of their property;
- L. Provide opportunities and incentives to help both large and small farm and forest landowners to continue their farm or forest operations;
- M. Provide both employment and housing opportunities so that County residents can both live and work in the County;
- O. Permit a broad range of developmental design opportunities with flexibility to encourage more creativity in balancing the needs of environmental protection with accommodation of future growth.

The Planning Director's primary access alternative to allow access to the parking area and proposed winery from View Road protects an established mature vineyard; reduces the amount of property removed from agricultural use; allows a safe and appropriate access point, which is located a significant distance from the nearest residence and minimizes impacts on the View Road community and the users of View Road; and should be upheld.

IV.

Treating the winery proposed by Mr. and Mrs. Comfort as a development requiring Site Plan Review requires conformance with the Criteria for Approval in 16.15.080. Paragraph 2 of that section deals with site layout and reads as follows:

2. Site Lay-Out. The location of the development, parking, landscape screening and buffers shall meet the requirements of Chapter 17.03 ICC and following standards:
 - a) Locate development to minimize the amount of disturbance to natural features and landscape;
 - b) Development shall be located so as to minimize the amount of agricultural land loss and shall not be located on prime soils.

8. Traffic and Circulation – Shall comply with the requirements of Chapter 17.03.ICC.

The Comfort proposal raises three issues in regard to site layout. First, both the parking area and the building are over-sized for the development being approved. Secondly, the location of the parking area and the building, along with an approval requirement of hundreds of feet of private road through the Commercial Agriculture parcel is of concern. Both of these fail to minimize the amount of disturbance to natural features and landscape, and to minimize the amount of agricultural land lost. The Applicants have failed to show that there are no other locations on the site more appropriate for the use [minimize impacts] or that the amount of disturbed land is necessary for the parking, winery, and tasting room, the only uses being approved at this time. However, this issue was not set forth in the Comprehensive Statement and, therefore, is not before the Hearing Examiner.

V.

The Applicants argue that a winery is a permitted use; that they are not required to obtain Site Plan Approval; that the Land Use Standards for Small-Scale Recreation and Tourist Uses do not apply to a winery on their Commercial Agricultural zoned property; and that the existing commercial access serving this site is an appropriate access point for both primary and secondary access to the winery.

Some or all of these points may, in fact, be justified. However, the Applicants waived any right to raise these objections when the Applicants failed to appeal the Planning Director's Determination that Site Plan Approval and compliance with the Small-Scale Recreational Tourist Use Standards applied to the project. Additionally, the Applicants waived all right to complain about the Conditions of Approval attached to the Site Plan Approval by the Director when the Applicants failed to appeal the Director's Determination. The Hearing Examiner might have reached different conclusions had these issues been properly brought before the Hearing Examiner.

However, the Hearing Examiner's jurisdiction to hear Appeals of Administrative Determinations made by the Planning Director is limited to Appeals pursuant to ICC 16.19.190.B.1. The Hearing Examiner only has authority to hear Appeals of a Type II Decision when the Appeal is filed within 14-days of the Director's Decision, accompanied by a written Statement of Appeal, and any required fee.

Furthermore, an Appeal is not perfected unless a Comprehensive Statement setting forth in detail the alleged errors and/or basis of the Appeal is filed within 30 days of mailing of the Director's Decision. The Applicants have not complied with this section and any issues they have with the Decision reached by the Director are not currently before the Hearing Examiner for resolution.

VI.

Assuming the requirements for Site Plan Approval, including application of the Development Standards, to Small-Scale Recreation and Tourist Uses applied to the

winery and associated tasting room and kitchen proposed by the Comforts, the Planning Director appropriately used Code-granted flexibility to modify the requirement that access to the winery be off of Wilkinson Road, a county collector, and appropriately concluded that, under the circumstances, an alternative primary access off of View Road, as set forth in the Conditions of Approval, should be allowed.

VII.

As indicated in the Findings, the Applicant stated a desire to conduct other conditional uses in the future. It appears that the building designed for the winery includes extra space that could be and was intended to be used for other conditional uses.

If the Applicant still desires to pursue other conditional uses, the Applicant should consider that there may be locations other than that proposed for the current winery building which would enhance the opportunity for approval. Uses that could otherwise be approved may not be approved for the location the Applicant is proposing as a winery.

Approval of the Applicants' site plan for a winery, tasting room, and associated parking should not be considered by the Applicants as improving the chances for approval of other Conditional Uses in the same building.

The Applicants would be well advised to apply for future uses they hope to locate in the winery building prior to its construction. To do otherwise, runs the risk of obtaining approval for a Conditional Use, but also a determination that the winery building location is not an appropriate location for the use.

VIII.

The Appeal of a Type II Decision is an Open Record Appeal to the Hearing Examiner. It requires a more Comprehensive Statement setting forth in detail the

alleged errors and/or the basis for Appeal within 30 days, or the Appeal is not properly filed and is to be dismissed without a hearing.

The requirement for a Comprehensive Statement of Appeal makes sense only if Appellants are required to identify issues so that other parties can prepare and respond. There is no reason for a Comprehensive Statement of issues in an Appeal unless an Appellant is going to be restricted to those issues after the Comprehensive Statement is filed.

An Open Record Hearing is a defined term in ICC 16.19.030 and the definition reads as follows:

Open Record Hearing: A Hearing, conducted by the Hearing Examiner; the Planning Commissioner; or the Board of Island County Commissioners. An Open Record Hearing creates the County's record through testimony and submission of evidence and information. An Open Record Hearing held prior to a County decision on a project permit is known as an "Open Record predecision [sic] Hearing." An Open Record Hearing, held on an appeal, is known as an "Open Record Appeal Hearing."

The definition distinguishes between a pre-decision hearing, which would include a hearing by the Hearing Examiner on a Type III Decision, where the Hearing Examiner makes the record and then issues the decision, and an Open Record Appeal Hearing, which is, in fact, an open record hearing taking testimony and submission of evidence and information on a properly filed Appeal. The definition does not further distinguish between the two types of hearings.

The Hearing Examiner concludes that the only testimony, evidence, and information relevant to an Open Record Appeal Hearing is that which resolves the specific issues raised by Appellants in their Comprehensive Statement of Appeal. Issues not raised in the Comprehensive Statement of Appeal are not before the Hearing Examiner.

IX.

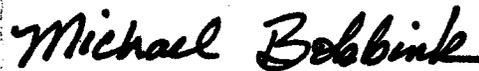
Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

The Planning Director had the authority to modify the requirement that access to the proposed winery building be off of a county collector, in this case, Wilkinson Road. The Planning Director properly exercised the authority to modify, the modification is consistent with the Comprehensive Plan, and the Decision of the Planning Director granting Site Plan Review Approval is hereby upheld, without modification.

The Hearing Examiner does not have the authority to hear all of the other issues raised by the Parties during the pendency of this Appeal as they were not properly before the Hearing Examiner. The only issues before the Hearing which can be resolved in a hearing on this Appeal are the issues set forth in the Comprehensive Statement of Appeal filed by the Appellants.

Entered this 25th day of April 2014, pursuant to authority granted under the laws of the State of Washington and Island County.



MICHAEL BOBBINK
Island County Hearing Examiner

APPEAL PROCESS:

APP (Administrative Decision)

Appeal Process: This land use decision is a final determination which may be appealed by filing a land use petition in Island County Superior Court within twenty-one (21) days of its issuance. Specific requirements for the petitions contents, time and service of process, and payment of the cost of the transcription of the record of the hearing may be found in Chapter 70C of Title 36 RCW.