

**BENTON COUNTY BOARD OF ADJUSTMENT
AUGUST 5, 2010 – 7 P.M. – PUBLIC HEARING
PLANNING ANNEX – 1002 DUDLEY AVENUE
PROSSER, WA 99350**

The Chairman opened the public portion of the hearing at 7:00 p.m.

NOTE: The minutes are a summary of testimony presented at the hearing, not a verbatim transcript.

NOTE: All persons present that wished to testify on any actions presented to the Board of Adjustment tonight had been sworn in.

ROLL CALL:

PRESENT:

Brent Chigbrow
Herb Everett
Bob Page
Glenn Bestebreuer

ABSENT:

Dean Burows

PLANNING STAFF

Clark Posey, Senior Planner
Carel Hiatt, Recorder

MOTION: It was moved and seconded that the July 1, 2010 Board of Adjustment minutes be approved as corrected. The correction was to change the name of "Jim Watson" to "Jim Watts" an opponent who testified regarding Special Use Permit – SP 10-13. The minutes still need to be approved by Vice-Chairman Dean Burows as he conducted part of the Board's hearing due to the fact that the Chairman had to step down on Special Use Permit – SP 10-06 American Rock Products. The July 1, 2010 minutes will be presented before the Board of Adjustment again September 2, 2010. Motion carried.

UNFINISHED BUSINESS:

SPECIAL USE PERMIT – SP 10-04 – for the operation of a manufactured home setup business including storage of supplies. The site is located at 19201 N Webber Canyon Road on Lot 1 of Short Plat 1884 in Section 29 and 30, Township 9 North, Range 27 East, W.M. Applicant: Roy R. Conley Jr. 19201 N Webber Canyon Road – Benton City, WA 99320

The Chairman continued the open record hearing and asked for the Planner's summarization of progress from May 13, 2010 to date. The Planner informed the Board that the reason for the 90-day continuance was to allow the applicant time to clean up his site. The following Exhibits 30B to 60 were entered into the record by reference.

The Chairman asked when was the black and white picture taken. The Planner replied that the date was August 4, 2010. The Chairman commented that the recent pictures presented to the Board at this hearing do not show any significant progress made by the applicant within the 90-extension period.

APPLICANT TESTIMONY:

ROY CONLEY, JR. 19306 N WEBBER CANYON ROAD – BENTON CITY.

The Chairman informed the applicant that the current photos that the Board was presented with tonight do not show any significant change from the May presentation.

Mr. Conley replied that he had been trying since May to rent a bulldozer to assist him in clean

up work of his site. He was able to obtain one yesterday – August 4, 2010. He presented the following exhibits showing updates to his site. Exhibit Nos. 61 and 62 show the site as it is today – the blue containers have been removed from the site. Exhibit Nos. 63-70 – show the site that has been cleaned up, tires stacked and other equipment utilized in his business has been placed neatly on site.

Mr. Bestebreur asked the applicant what type of equipment took so long to be able to rent. The applicant replied a bulldozer. Mr. Bestebreur then asked what did the applicant do with the dozer. The applicant stated that he was trying to flatten the property to make it more efficient for usage.

Mr. Bestebreur asked the applicant what he did with the wood waste, installation and other stuff that was buried on site. The applicant replied that there was no installation. Again, Mr. Bestebreur asked what was done with the wood waste. The applicant replied that all of the garbage went to the landfill; the wood was burned and buried. Basically, the majority of the waste was covered up. The applicant stated that all the concrete, blacktop and other fill material was pushed in.

Mr. Page asked the applicant to pinpoint on Exhibit No. 13 – large aerial of the site – where the material was pushed. The applicant outlined the area.

The applicant stated that he had disposed of several cars. The cars currently on site are all licensed and operational. However, one vehicle the white one as shown on Exhibit No. 28 is currently be worked on by the applicant. The applicant stated that there are only three or four vehicles now associated with the manufactured home placement business, such as two big trucks, large red trailer which is attached to one of the big trucks and a service van.

Mr. Page addressed Exhibit No. 45, which shows a yellow and black car. The applicant is working on this vehicle. The applicant commented that Exhibit 45 and 46 reveals some of his personal property located on site.

The Chairman asked the applicant what type of vegetation would be planted for regrowth seeing as he had bladed off the area down to dirt. The applicant replied that the dirt area would be irrigated and reseeded. However, most of the area will be rocked. He will apply for a permit for the remaining boxcar.

The Chairman asked if all the concrete and asphalt waste was taken down the slope and buried. The applicant replied that to be correct about 20 to 40 feet, as he wanted to make the area flat or semi flat.

Mr. Bestebreur was disturbed with the fact that the applicant testified that it took him three months to be able to rent a bulldozer. The applicant replied that all the rental places did not have this equipment or that it was already rented. The applicant continued to state that he had all of his employees on site cleaning it up.

Mr. Page asked if this application were to be approved what would prevent it from becoming a mess again. The applicant replied that the remaining “stuff” on site was personal not business related.

The applicant submitted Exhibit Nos. 71-75 showing the site as it exists today. Exhibit Nos. 76-84 show surrounding property owner's sites and material stored on the sites.

Mr. Bestebreur asked the applicant why he waited until the day before the hearing to start cleaning up the site.

The applicant continued to state that he would be constructing a rack for the axels used in his business. He keeps enough equipment on site for two doublewide homes – four tongues for two houses and tires. He will fence the site on August 13, 2010. He will continue to separate his business vs. personal materials on site.

OPPONENT TESTIMONY:

TAMMY WATKINS – 18506 WEBBER CANYON ROAD – BENTON CITY, WA 99320 presented to the Board the following pictures: Exhibit No. 85 - 1997, Exhibit Nos. 86-95 - June 3, 2010, Exhibit Nos. 96-99 - June 13, 2010, Exhibit No. 100 - June 21, 2010, Exhibit Nos. 101-108 - July 15, 2010, Exhibit No. 109 - July 16, 2010, Exhibit No. 110 - July 29, 2010, Exhibit No. 111 - July 30, 2010, Exhibit No. 112 - July 31, 2010, Exhibit No. 113 - August 1, 2010, Exhibit Nos. 114-120 - August 4, 2010, Exhibit Nos. 121-122 - August 5, 2010. Ms Watkins stated that the applicant was turning the site into a landfill. She continued to express concerns over contamination to her and surrounding wells due to the debris being buried on site. Wood waste, metal, tires, etc. was all being pushed over the hill and buried about 40 feet. The applicant was destroying the property, which could potentially affect the surrounding property owners due to dust, debris and unknown material buried on site. In addition, the pictures do show that the two trailers are still located on the applicant's site.

REX WATKINS – 18506 WEBBER CANYON ROAD – BENTON CITY, WA 99320 stated he was disturbed to see the land being destroyed.

APPLICANT REBUTTAL:

ROY CONLEY – stated that there was only one container on site. The blue one was removed a few weeks ago. He reiterated that his employees were working at the site cleaning up the debris. A considerable amount of debris was on his site prior to his occupancy. He did bury some tires, wood shingles, concrete, etc.

The Chairman stated that one of the pictures reveals a considerable amount of wood being pushed off the side of the hill to be buried. The applicant stated that what looked like wood was shingles, concrete and some of the material was already on site previous to his occupancy. He did not dump tires as he has a bunch currently at his site, so why would he bury just two tires.

The Chairman closed the public hearing.

Mr. Page stated that the pictures warrant an investigation from the Benton Franklin Health District-Solid Waste Inspector and Code Enforcement to find out exactly what had been buried by the applicant on site.

The Planner informed the Board that this investigation would come under the jurisdiction of the Benton Franklin Health District.

Mr. Bestebreur found it troublesome that the applicant did nothing to clean up the site until two days prior to the hearing when in fact the applicant had requested and been granted 90 days to clean up the site.

Mr. Everett agreed with the rest of the Board that the Health District needs to investigate this matter. The applicant had been given three months and did nothing as noted until two days prior to the Board's hearing. He could not approve this special use permit.

The Chairman also agreed with the other Board members statements and in addition to the Health District any other agency to be involved needs to be contacted and made aware of this situation.

MOTION: Mr. Bestebreuer made a motion which was seconded by Mr. Page that the Board of Adjustment, pursuant to the aforementioned controlling factors, finds that the application of Roy Conley, Jr. dba A Big Bee Inc. for a Special Use Permit – SP 10-04 should be denied based on the following: (1) the current condition and the actions to date by the applicant based on pictures and testimony presented are not concurrent and acceptable to the Board (2) health hazard due to the amount of unknown debris and waste materials that were buried onsite by the applicant and (3) Solid Waste Investigation by the Benton Franklin Health District and any other respective agencies need to be informed to review and investigate the waste products buried on site by the applicant and that the Chairman, in conjunction with the Secretary of the Board of Adjustment, prepare and adopt written findings and conclusions that articulate and are consistent with the findings, conclusions and/or decisions made by the Board of Adjustment tonight. Motion carried.

NEW BUSINESS:

VARIANCE REQUEST – VAR 10-02 – the applicant is requesting a variance from BCC 11.12.040 for a four foot reduction from the required 10 foot side yard setback and a variance from BCC 11.12.050 for a 21 foot reduction from the required 25 foot back yard setback. The site is located at 1244 N Neel Loop on Lot 40 of Lampson Homesites in Section 34, Township 9 North, Range 29 East, W.M. The written date of completeness on this action was July 12, 2010. Applicant: Darrell/Jo Lea Nickerson – 1244 N Neel Loop, Kennewick, WA 99337.

The Chairman opened the public portion of the hearing.

The Planner informed the Chairman and Board members that the applicant had submitted a letter stating that he was unable to attend tonight's hearing as he was out of town. The applicant would like this variance request continued to September 2, 2010 Board of Adjustment Hearing.

The Chairman stated that no testimony would be allowed for this hearing item tonight seeing as the applicant was not in attendance and had submitted a letter requesting a continuance.

MOTION: Mr. Bestebreuer made a motion and Mr. Everett seconded said motion that Variance Request – VAR 10-02 be continued to the September 2, 2010 Board of Adjustment Hearing – 7 p.m. Planning Annex – 1002 Dudley Avenue – Prosser, WA 99350 per the applicant's request and for the taking of public testimony. Motion carried.

SPECIAL USE PERMIT – SP 10-14 – the applicant is requesting a special use permit for the addition of a tasting room for Kitzke Cellars, LLC. The site is located at 72308 E 260 PR NE – Richland on Lot 2 of Short Plat 1619 in Section 20, Township 9 North, Range 28 East, W.M. The written date of completeness on this action was July 7, 2010. Applicant: Paul/Vickie Kitzke – 72308 E 260 PR NE – Richland, WA 99352

The Chairman opened the public portion of the hearing. The Planner summarized said action

for the Board, outlined the site on BOAH1.1 – large aerial of the site, and entered into the record the following Exhibits – BOA1.1 to BOA 1.16 and BOAH 1.1 and BOAH 1.2.

The Planner informed the Board that a new memo dated August 5, 2010 was given to the Board tonight in replacement of the July 23, 2010 memo. The applicant presents tonight with the request to operate a tasting room from his residence. The applicant falls under the criteria of a Home Occupation, but seeing as he is operating a tasting room and selling products from his residence without operating the winery from this site it constitutes him obtaining a special use permit. If the applicant operated the winery from this site then he would be allowed outright to sell his wine.

APPLICANT TESTIMONY:

PAUL KITZKE – 72308 E 260 PR NE – RICHLAND, WA 99352 stated that he wanted to operate a small tasting room out of his garage, which is attached to his residence. The normal hours of operation would be Thursday – Sunday 11 a.m. to 5 p.m., open for special events, such as barrel tasting, wine/chocolates, etc. and by appointment only. No weddings or special events such as these would be requested. His main winery operation is in Grandview, Washington.

Mr. Bestebreuer asked about the size of the property in question and if the tasting room will be conducted in the attached garage as noted in BOAH 1.2.

The Chairman asked the applicant if he had read and approved the conditions of approval affixed to his special use permit. The applicant responded that the conditions of approval were acceptable.

PROPONENT TESTIMONY: NONE.

OPPONENT TESTIMONY:

STEVE LEWIS – 72309 E 260 PR NE – RICHLAND, WA 99352 expressed concern over the effects that this venture will have on the privately maintained road, such as increase in traffic, alcohol liability, children's safety, parking of vehicles on the private road, in his driveway and hosting of special events. The access to this quiet residential area was not for commercial ventures.

APPLICANT REBUTTAL:

PAUL KITZKE stated that his property was zoned Agriculture and he would be allowed to operate a winery at this site without the necessity of obtaining a special use permit. The hours would be limited and he does not anticipate a huge amount of vehicle traffic to this site. He understands that the entrance to his site is by a private access easement.

Mr. Bestebreuer asked about maintenance agreement for the road. The applicant replied the paving was done prior to his residing in the vicinity.

The Chairman asked the applicant if he had discussed this venture with surrounding property owners. The applicant replied that he had and no objections were noted. He did not discuss this venture with Mr. Lewis as they have had disagreements in the past.

Mr. Page suggested that if this action were to be approved that it be conditioned for two years only and then reviewed at the end of two years.

Mr. Page asked the applicant if he and Mr. Lewis could come to an agreement with regards to the road maintenance.

The Chairman closed the public portion of the hearing.

Mr. Bestebreur asked about the liability of operating a Home Occupation on a private road.

The Chairman stated he was not concerned over the operation of a small winery on 260 PR. He did state that the relationship between the two neighbors was a concern to the Board.

Mr. Everett understands that the private road would be the only access to the winery, but he would have more concern if the hours were greater and the operation larger.

The Board instructed the Planner to consult with the Prosecuting Attorney's office with regards to liability on a private access easement vs. a county road.

Mr. Page brought up the added condition that if this action were to be approved it be for two years and reviewed at the end of the two-year period. The applicant needs to contact his neighbor(s) with regards to his impending winery operation. The applicant also needs to contact his private insurance company with regards to liability issues on a private road pertaining to a commercial business.

The Chairman re-opened the public portion of the hearing for the taking of additional testimony.

MOTION: Mr. Bestebreur made a motion and Mr. Page seconded said motion that Special Use Permit – SP 10-14 be continued to the next regularly scheduled Board of Adjustment Hearing to be conducted on September 2, 2010, 7 p.m. – Planning Annex – 1002 Dudley Avenue Prosser, WA in order to allow for additional testimony and for the Board to be provided with the following information: (1) the Planner to contact the Prosecuting Attorney's Office for an interpretation on liability of a private access easement vs. a public road for area residents, (2) time for the applicant to contact an attorney or insurance agent with regards to liability issues in operating a winery on a private road vs. a county road and (3) the applicant to inform his neighbors or neighbor about his proposed winery operation. Motion carried.

The Chairman adjourned the public hearing at 8:47 p.m.



BRENT CHIGBROW, CHAIRMAN
BENTON COUNTY BOARD OF ADJUSTMENT

RECORDER: CAREL HIATT