

DOUGLAS COUNTY

DEPARTMENT OF HEARING EXAMINER

140 19th Street NW
East Wenatchee, WAS 98802-4109

BEFORE THE DOUGLAS COUNTY HEARING EXAMINER

IN THE MATTER OF:)	FINDINGS OF FACT,
APP 2018-02)	CONCLUSIONS OF LAW
Jerry and Debra Yonaka)	AND DECISION

FINDINGS OF FACT

1. Jerry and Debra Yonaka (Appellants) are owners of property located at 770 South VanWell Avenue, East Wenatchee (subject property).
2. The subject property is adjacent to Pangborn Airport and within Airport Overlay zones 3 and 5.
3. The Appellant's wish to use their property as a commercial wedding venue and potentially a venue for other public and private gatherings.
4. The Appellant's had purchased the subject property with the specific intent to utilize the subject property for a commercial wedding venue and to hold other public and private events. Prior to their purchase of the property, the Appellant's had contacted Douglas County to ask what permits would be needed in order to use the property for weddings and other public and private events.
5. After purchase of the property, the Appellant's received a building permit to construct a barn that was intended to be utilized with the commercial public and private events held in their back yard.
6. Prior to applying for what the Appellant's believe were the required permits, the Appellant's had a discussion with Douglas County Planning staff. It was during these discussions that the Appellant's learned that the Airport Overlay zones would prohibit use of the property for public and private assembly.
7. The Appellant's requested an administrative interpretation from Douglas County Transportation and Land Services Director as to whether a private or public event venue is either:
 - 7.1 A "temporary use" exempt from the provisions of the Airport Overlay (AP-O) zoning district pursuant to DCC 18.65.040(C); or
 - 7.2 Not a "public assembly" of people and other uses or activities that allow public concentration of people and therefore not regulated by DCC 18.65.050(G).

8. On August 15, 2018, Mark Kulaas, Director of Land Services, issues his administrative interpretation concluding as follows:
 - 8.1 A private event venue use is a reception hall under the provisions of Douglas County Code Title 18 - Zoning. A reception hall is specifically identified as a conditional use in DCC 18.80.320 and therefore cannot also be classified as a temporary use. Moreover, a temporary use is not repetitive through time. A reception hall is not exempt from the provisions of Airport Overlay (AP-O) zoning district pursuant to DCC 18.65.040(C).
 - 8.2 Reception hall use is a public assembly of people and therefore is regulated by DCC 18.65.050(G).
9. On August 21, 2018, Appellant's appealed this administrative interpretation pursuant to the Douglas County Code.
10. The Appellant's have the burden of proof to demonstrate that the administrative interpretation is erroneous.
11. An open record appeal hearing after due legal notice was held on October 18, 2018.
12. At this hearing, the entire planning staff file for APP 2018-02 and LAR 2018-04 were admitted into the record.
13. Appearing and testifying on behalf of the Appellant was Jerry Yonaka. Mr. Yonaka testified that he and his wife own the subject property. Mr. Yonaka testified consistent with his letter dated July 13, 2018, and the appeal dated August 21, 2018. Mr. Yonaka testified regarding his conversations with Douglas County Planning staff prior to Mr. and Mrs. Yonaka's purchase of the subject property. However, the Hearing Examiner finds that these discussions do not legally operate to relieve Mr. and Mrs. Yonaka of the requirement of performing their own investigation as to the requirements of the Douglas County Code regarding the development of any property of which they own, or plan to own. The Appellant raised the question as to how DCC 18.65.050(M)(1) applies in this situation. Appellant's position is that this provision allows 25 people per acre in zone 3 and 50 people per acre in zone 5 and therefore large public and private gatherings are contemplated within those zones.
14. Debra Yonaka, also property owner and Appellant, provided testimony asking whether or not the Hearing Examiner had Appellant's August 21, 2018 letter. The Hearing Examiner assured Mrs. Yonaka that he did have that letter and had reviewed it.
15. A private event venue is a use classified under the provisions of DCC Title 18 - Zoning as a "reception hall" as defined in DCC 14.98.654.
16. An event venue / reception hall is not a "temporary use" as defined and/or contemplated under the Douglas County Code if that use is consistently used multiple times over the course of several months during one year. In other words, a use is not "temporary" if that use occurs regularly and over multiple periods of time during the course of a year, regardless of whether the actual time of the use may be limited to less than 5 hours per event.

17. The Administrator of Douglas County Code Title 18 has the authority to determine the classification of a use and whether that use is allowed within a particular zoning district.
18. There are five (5) categories of land use set forth in the Douglas County Code. Those are:
 - 18.1 Permitted uses;
 - 18.2 Accessory uses;
 - 18.3 Conditional uses;
 - 18.4 Prohibited uses; and
 - 18.5 Temporary uses.
19. A particular activity within a particular zoning district can only have 1 classified use as the uses are exclusive.
20. A reception hall is authorized as a conditional use in the AC-10 zoning district. Therefore, it cannot be also classified as a temporary use in that district.
21. Conditional uses are permanent uses meaning that the permit attaches to the specific property and is presumed valid in perpetuity unless an expiration period is established or the use is abandoned. Temporary uses do not run with the land as temporary uses contemplate a use that is set up for a fixed, short period of time and then all of the equipment of the use is taken down and moved to a new location. This is consistent with traveling entertainment activities such as circuses and carnivals.
22. The activities described by the Appellant as to the contemplated use of their property are considered a public assembly as they are associated with the reception hall.
23. The descriptive terms in DCC 14.98.642 and DCC 18.65.050(G) are illustrative and not exhaustive.
24. The Appellants have failed to meet their burden of proof that the conclusions set forth in the administrative interpretation by the Administrator dated August 15, 2018 are in error.
25. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

CONCLUSIONS OF LAW

1. The Hearing Examiner has the authority to render this decision.
2. The Appellant's have the burden of proof to prove that the administrative interpretation is erroneous.
3. A private event venue is a reception hall under the provisions of Douglas County Code Title 18 – Zoning.
4. A reception hall is specifically identified as a conditional use in DCC 18.80.320 and therefore cannot also be classified as a temporary use.

5. A temporary use is not repetitive through time. A reception hall is not exempt from the provisions of the Airport Overlay (AP-O) zoning district pursuant to DCC 18.65.040(C).
6. A reception hall use is a public assembly of people and therefore is regulated by DCC 18.65.050(G).
7. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

DECISION

Based upon the above Findings of Fact and Conclusions of Law, the administrative interpretation of the Douglas County Director of Land Services, dated August 15, 2018, is hereby **AFFIRMED** in its entirety.

DATED this 24th day of October, 2018.

DOUGLAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp