

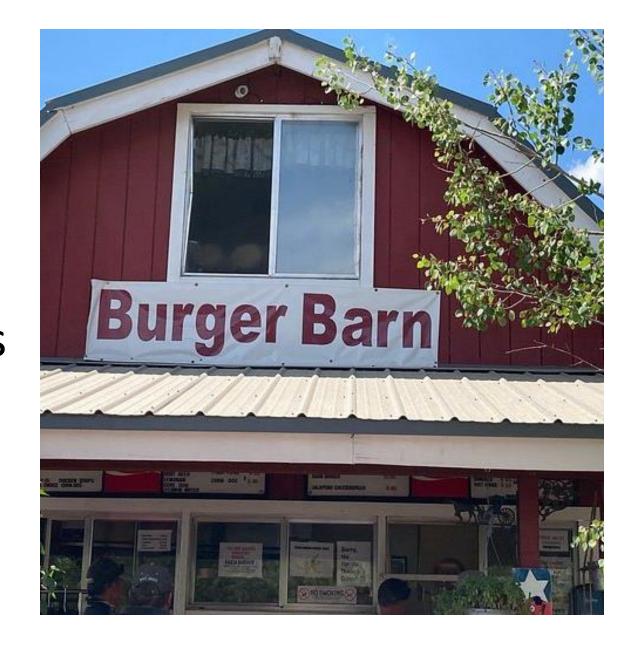
v. FRIENDS OF SAMMAMISH VALLEY

Impact on Skagit County's Efforts to Reform Agritourism Regulations

Jason D'Avignon, Civil Deputy Prosecutor

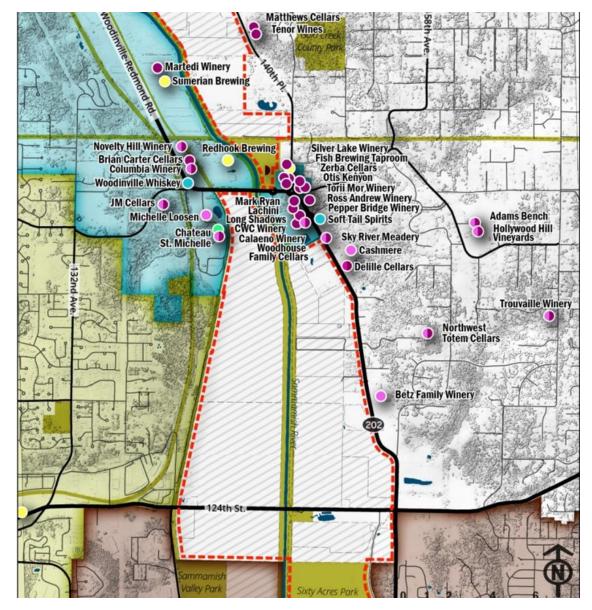
QUESTION

If you raise beef cattle, is serving hamburgers an agricultural accessory use?



ORDINANCE 19030

- In 2016 King County commissioned a study about wineries, breweries, and distilleries (WBDs)
 - 54 WBDs in unincorporated King County; only 4 with permits
- Enacted in September 2019
- Amended zoning and business licensing regulations for wineries, breweries, and distilleries (WBDs), and accompanying tasting rooms.
- Applied to all of King County, but the focus of the case was the impact on land designated as agricultural and rural under the King County comprehensive plan, particularly in Sammamish Valley



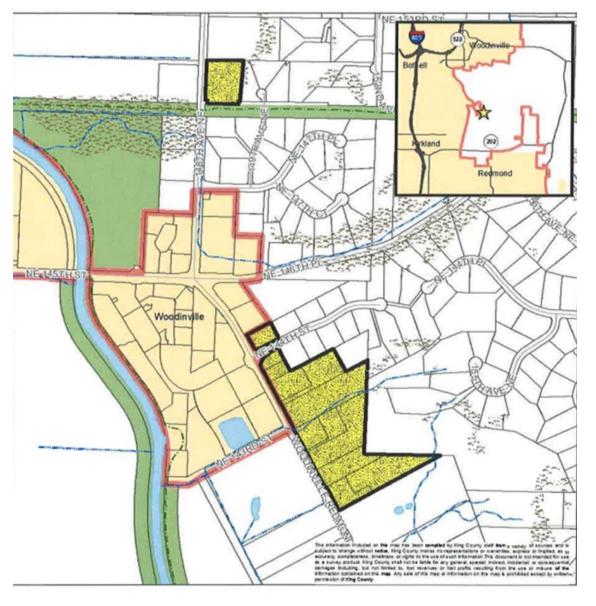
othell Woodinville RA-5 RA-2.5 A-10 Kirkland RA-5 Redmond Sammamish Valley Area Winery Study Urban Growth Boundary

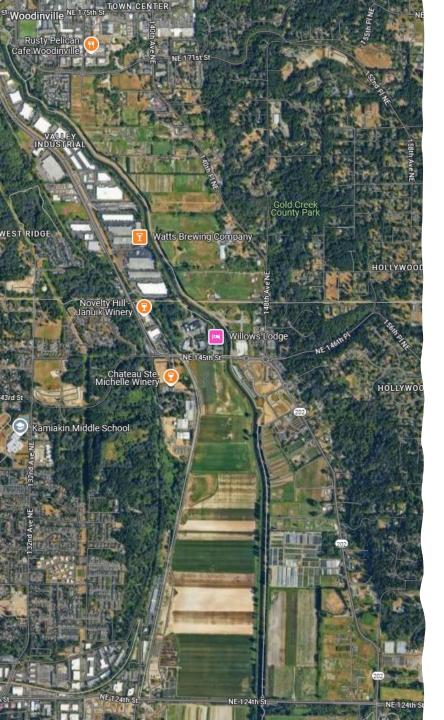
ORDINANCE 19030

- It applied to all of King County, but the focus of the case was the impact on land designated as agricultural and rural under the King County comprehensive plan, particularly in Sammamish Valley
- Imposed new licensing requirements for WBDs in rural and agricultural areas
- Created different WBD sizes (I, II, III).
- Established **temporary use permits** for large events with limits based on facility size
 - WBD I: ≤ 50 people & 2/yr
 - WBD II: ≤ 150 people & 2/mo or 24/yr
 - WBD III: ≤ 250 people & 2/mo or 24/yr

ORDINANCE 19030

- Eliminated the prior requirement that sales be limited to products produced on-site and grown in Puget Sound.
 - Replaced it with a requirement that 60 percent of the products processed must be grown on-site.
- Tasting and retail sales could occur only as an accessory to the primary WBD production use.
- Authorized up to 25 percent of any site with these facilities to be **paved**.
- Created "Demonstration Project Overlay A" in the area adjacent to Woodinville, establishing "remote tasting rooms" (RTRs); previously had not been explicitly allowed.





CHALLENGE TO ORDINANCE

- Friends of Sammamish Valley & Futurewise
 - Amicus: Western Washington Agricultural Assoc., Agricultural Organizations, Sierra Club, Orca Conservancy, and Black Farmers Collective
- Issues before the GMHB:
 - Adequacy of SEPA checklist
 - Non-ag accessory uses interference with ag use
 - Intensity of WBD use incompatible with rural zoning requirements
 - Legalization of unlawful preexisting nonconforming uses

GMHB DECISION: SEPA

- SEPA checklist was inadequate and **failed to disclose likely environmental impacts**, including those from:
 - The Demonstration Project Overlay A, allowing remote tasting rooms.
 - Eliminating the **on-site production requirement**, potentially enabling sham businesses disconnected from agriculture.
 - Reducing the minimum lot size in rural areas.
 - Exempting certain event centers from zoning restrictions via temporary use permits.
 - Failing to evaluate **foreseeable impacts** on groundwater (from septic) or Light/Glare (from tasting rooms and events).
- Baseline for SEPA ≠ existing unlawful uses
- Cannot balance positive & negative impacts.

GMHB DECISION: GMA

- The ordinance was inconsistent with and failing to implement the King County Comprehensive Plan.
- It failed to maintain and enhance agricultural industries and discourage incompatible uses, thwarting the conservation of productive land.
- It authorized uses incompatible with rural character and scale, including those attracting and serving urban residents.

GMHB DECISION: GMA

Accessory Uses

- The ordinance failed to restrict accessory uses to those **consistent with the size**, **scale**, **and intensity of existing agricultural use** and buildings.
- It did not require WBDs to be located in already developed portions of parcels. It allowed development in areas without "prime soils".
- The County improperly focused on allowing desired non-agricultural uses (tasting rooms, events) rather than ensuring they were truly accessory to agriculture.
- Large-scale events were authorized without adequate regulations ensuring setbacks to prevent conflicts with agricultural activities.

COURT OF APPEALS

- Reversed the GMHB.
- Concluded the County's SEPA Checklist was adequate to support the DNS.
 - The DNS did not impermissibly balance potential beneficial and negative impacts.
- Used a different SEPA baseline, comparing impacts to the existing uses ongoing in the area, not the underlying environmental condition.
- Interpreted the ordinance as more restrictive than prior code and found it generally conformed to the comprehensive plan.

SUPREME COURT

- Affirmed the GMHB's decision.
- 5-4 decision
- At its core it's a decision about
 - Deference (by the Court to the GMHB & by the GMHB to the County) and
 - **SEPA checklists** for nonproject actions.
- But still valuable because the *dicta* shows how the Court approached the issue and see the law and appears to take a hard line in enforcing the GMA's limitations on development on ag land and other rural areas.



SUPREME COURT: MAJORITY

- Agreed with GMHB that SEPA checklist was insufficient
 - Failed to consider environmental impacts
 - Did not contain reasonably sufficient information
- SEPA baseline = condition of existing rural agricultural environment

SUPREME COURT: MAJORITY

- Agreed with GMHB that GMA was violated
 - Lack of meaningful environmental review critical to decision.
 - Did not say the GMHB was right so much as the County could not show they were wrong
 - But it seems the Majority thought they were right.
- Most clear statement of law: "The GMA does not allow 'innovative' techniques that convert prime agricultural soil to unrelated uses."

SUPREME COURT: DISSENT

- Doesn't believe the GMHB gave the County proper deference
 - GMHB was "unduly skeptical"
- SEPA sufficient for nonproject action
- GMHB misinterpreted the Ordinance
 - E.g., finding its requirement that WBDs be on land "without prime agricultural soil" by implication allowed the conversion of farmland.
 - Dissent provides good analysis of RCW 36.70A.177:
 - <u>If existing development</u>: non-ag use must be within 1 acre envelope of existing development; some land may be converted so long as within the acre.
 - <u>If no existing development</u>: non-ag use must be on non-prime soil and still is limited to 1 acre.
 - Consistent with Administrative Official Interpretation re: siting non-ag building in Ag-NRL (May 14, 2010).

RCW 36.70A.177(1)-(2):

- (1) A county or a city may use a variety of innovative zoning techniques in areas designated as agricultural lands of long-term commercial significance under RCW 36.70A.170. **The innovative zoning techniques should be designed to conserve agricultural lands and encourage the agricultural economy**. Except as provided in subsection (3) of this section, a county or city should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes.
- (2) Innovative zoning techniques a county or city may consider include, but are not limited to:
 - (a) <u>Agricultural zoning</u>, which limits the density of development and restricts or prohibits nonfarm uses of agricultural land and may allow accessory uses, including nonagricultural accessory uses and activities, that support, promote, or sustain agricultural operations and production, as provided in subsection (3) of this section;
 - (b) <u>Cluster zoning</u>, which allows new development on one portion of the land, leaving the remainder in agricultural or open space uses;
 - (c) <u>Large lot zoning</u>, which establishes as a minimum lot size the amount of land necessary to achieve a successful farming practice;
 - (d) **Quarter/quarter zoning**, which permits one residential dwelling on a one-acre minimum lot for each one-sixteenth of a section of land; and
 - (e) <u>Sliding scale zoning</u>, which allows the number of lots for single-family residential purposes with a minimum lot size of one acre to increase inversely as the size of the total acreage increases.

RCW 36.70A.177(3):

- (a) **Accessory uses** shall be **located, designed, and operated** so as to **not interfere with**, and to **support the continuation of**, the overall **agricultural use** of <u>the property and neighboring properties</u>, and shall comply with the requirements of this chapter;
- (b) Accessory uses may include:
 - (i) <u>Agricultural accessory uses and activities</u>, including but not limited to the storage, distribution, and marketing of regional agricultural products from one or more producers, agriculturally related experiences, or the production, marketing, and distribution of value-added agricultural products, including support services that facilitate these activities; and
 - (ii) <u>Nonagricultural accessory uses and activities</u> as long as they are <u>consistent</u> with the <u>size</u>, <u>scale</u>, and <u>intensity of the existing agricultural use of the property and the existing buildings on the site</u>. Nonagricultural accessory uses and activities, including new buildings, parking, or supportive uses, shall not be located outside the general area already developed for buildings and residential uses and <u>shall not otherwise convert more than</u> one acre of agricultural land to nonagricultural uses; and
- (c) Counties and cities have the authority to limit or exclude accessory uses otherwise authorized in this subsection
- (3) in areas designated as agricultural lands of long-term commercial significance.

COUNTY CODE DEFINITIONS

Accessory use: applies to a use, building or structure, which **is dependent on and subordinate or incidental to**, and located on the same lot with, a principal use, building, or structure.

COUNTY CODE DEFINITIONS

Agricultural accessory use: an agricultural accessory use shall predominantly serve the principal use of the farm, but may also serve other farms. An accessory use to an agricultural use, including, but not limited to, the following:

- (1) Outdoor storage of processed and unprocessed natural materials, waste materials, or other similar materials;
- (2) Impoundments under 1-acre feet in volume;
- (3) Farm animal or horticultural viewing by the public;
- (4) U-pick sales to the public;
- (5) Storage of agricultural products, ingredients, packaging and/or equipment used on-site;
- (6) Miscellaneous agricultural support buildings, including barns, sheds, corrals, farm offices, and coops, which are used for on-site soil-dependent agriculture; and
- (7) Activities associated with tourism which promote local agriculture; provided, that adequate parking and specified ingress and egresses are designated and permitted.

Ordinance O20250001, § 3: Agricultural accessory use "shall not be interpreted to permit business activity involving the regular and ongoing conduct of events such as weddings, concerts, retail fairs, rodeos or any other public gathering of a similar nature."

SCC DEFINITIONS

Conversion, agricultural land: any activity that alters the landscape so as to preclude a parcel or a portion of a parcel from the reasonable possibility of agricultural production. This includes the construction of structures or infrastructure or any other alteration which would make agricultural production of a parcel or portion of a parcel technically or economically infeasible. Locating structures within an existing developed area used as a home-site, or within an area not more than 1 acre in size on vacant parcels, shall not be considered conversion.

TAKE AWAYS

- 1. GMHB's decision is the lodestar.
- 2. CONVERSION IS VERBOTEN!
- 3. Must conserve and protect agricultural land.
 - Should be clear in the text
 - Should not rely on PDS's discretion to impose conditions on permits





TAKE AWAYS

- 4. Must be utterly clear as to what is and what is not an agricultural accessory use
 - Different standards depending on whether an ag accessory use, or not an ag accessory us.
 - If not clear, then its non-ag

TAKE AWAYS

- 5. Must have clear standards by which to measure the relative size, scale, and intensity of the primary aguse
- 6. Must incentivize & otherwise require development where development already exists

ACCESSORY USE?

What is the connection of the proposed accessory use (ag or non-ag) to the principal ag use?

How is it dependent on the principle use?

How does it serve the principle use of the farm?

What is the use-ratio between the accessory use and principle use?

- An accessory use on a large property may be too much for a smaller parcel
- Multiple factors necessary to determine

DRAFTING CODE

- Clarity is king.
- Clarity follows from a good structure
 - Don't mix procedure with substance
 - Don't be afraid to create subsections and subsubsections
 - Don't use the word "shall", use must or will

QUESTIONS?