

SPECIAL REVIEW

FINDINGS AND RESOLUTION APPROVING THE COLORADO ARONIA PROJECT

The Petition for a Special Review for the Colorado Aronia Project at Bingham Hill Farm to include: Value-Added Agricultural Processing associated with farming aronia berries, grapes, and other similar fruit, Agritourism Enterprise associated with farming aronia berries, grapes, and other similar fruits, A Bed & Breakfast accommodating up to 6 guests, and an Appeal to Section 10.10.A.3. of the Larimer County Land Use Code to allow an off-premise sign, upon the property described on Exhibit "A" attached hereto has been filed with the Board of County Commissioners of the County of Larimer.

On August 19, 2015, the Larimer County Planning Commission conducted a public hearing on the Special Review and recommended that it be approved subject to certain conditions.

On October 19, 2015, in the County Board Hearing Room of the Larimer County Courthouse, Fort Collins, Colorado, the Board of County Commissioners conducted a public hearing on the Special Review. The Board of County Commissioners, having heard the testimony and evidence adduced at said hearing and having considered and carefully weighed the same, now makes the following findings:

1. The Special Review request upon the property described on Exhibit "A" was advertised in a local newspaper of general circulation. Written notice of the hearing was delivered or mailed, first class, postage prepaid, to adjoining landowners of the proposed Special Review.

2. The general characteristics of the property are as follows:

- a. Parcel Numbers: 98322-11-702
- b. Total Development Area: 10.54 Acres
- c. Existing Land Use: Tree Farm/Nursery, Single Family Home, Event Center and Seasonal Camp
- d. Proposed Land Use: Value-Added Agriculture Processing and Agritourism associated with a farm use, Bed and Breakfast for up to 6 guests.
- e. Existing Zoning: FA-Farming
- f. Adjacent Zoning: FA-Farming
- g. Adjacent Land Uses: Agricultural, residential
- h. Services:
 - Access: Bingham Hill Road
 - Water: West Fort Collins
 - Sewer: septic
 - Fire Protection: Poudre Valley Fire

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No. Trips Generated by Use: 40 VTD

3. Applicant seeks Special Review to allow Value-Added Agriculture Processing and Agritourism. Cultivation and packaging of the berries is a use by right in the FA-Farming zoning district. The aronia cultivation will take place in the areas currently being used for the existing Tree Farm and Nursery. The project will work at determining best practices for production and also developing and testing value added products. In addition, the applicant is requesting approval of a Bed & Breakfast for up to 6 guests, to be located in the existing single family residence.

4. *Value-Added Agriculture Processing:* The Value-Added Agriculture Processing (VAAP) includes production of products from aronia berries including dried fruit, juices, wine, jams & jellies, flavored chocolates and powdered aronia for use in health supplements, nutrition bars, cosmetics and for coloring. Applicant has also stated that grapes will also be grown and processed. The VAAP will take place in a new proposed 4000 sq. ft. building that will also be used for packaging of the product. Some processing may also be done in the existing kitchen located in the existing multi-purpose building.

Proposed operations for the VAAP are described as:

- Operated by the owner of the property.
- Seasonal operation.
- Will operate 5 days a week (Monday – Friday) from 7 a.m. to 9 p.m.
- 1 additional employee in addition to the 4 that will be employed by the farming and packing operation.
- The uses together (i.e., the VAAP and Agritourism) are anticipated to create an additional 22 trips per day during peak season (June-August).
- Processing will be located 225 feet from the nearest property line.
- Processing and sales facility, all outdoor storage and on-site parking will be screened from dwellings within 500 feet.
- Virtually all activities associated with the VAAP will take place indoors.
- Less than 50% of the product to be processed will be grown onsite.

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5. *Agritourism:* Also part of the Special Review request is Agritourism associated with the farm use. The project description states that the Agritourism activities will include educational classes for producing and using aronia, family outings for “u-pick” opportunities, community workdays, sponsorship of charitable events and other community outreach, wine tastings, aronia themed gatherings, school field trips, farm tours and other similar activities related to aronia. Applicant has stated that additional weddings will not be conducted on the property under the guise of agritourism.

Proposed operations are described as:

- Operated by the owner of the property.
- Year round, with seasonal focus of June through August.
- 6 days a week from 7 a.m. to 9 p.m.
- 1-2 employees during the tourist season.
- All activities will take place more than 100 feet from a property line.

Traffic generation is anticipated to be approximately 18 vehicle trips/ day on weekends and 5 vehicle trips/ day during the week. The uses together (i.e., the VAAP and Agritourism) are anticipated to create an additional 22 trips per day during peak season (June-August).

6. *Bed and Breakfast:* Typically this type of Bed & Breakfast requires Minor Special Review (no hearing before the Planning Commission). The request has been incorporated into the Special Review request so that only one application was required.

Proposed operations are described as:

- Seasonal use with peak during tourist season (June-August). 7 days a week during tourist season (June-August) & Friday through Sunday off-season.
- No additional employees needed.
- Will utilize existing parking areas for the residence.
- Traffic will be consistent with that of a single family residence.

7. *Appeal:* The request also includes an appeal to Section 10.10.A.3. (sign code) to allow an off-premise sign. Two Transit Oriented Directional Signs (TODS) to notify vendors and guests of the project location are allowed without County approval.

8. The applicable Special Review criteria have been met as follows:

Section 4.5 Special Review

Section 4.5.3 Review Criteria: The following review criteria as applicable have been met as follows:

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A. The proposed use will be compatible with existing and allowed uses in the surrounding area and be in harmony with the neighborhood. Several neighbors have expressed concern with the proposed uses early in the process (Sketch Plan). A neighborhood meeting was required and held by the applicant. The Neighborhood Meeting Report was included in the Agenda. Questions at that meeting included details on the growing operation, the proposed building, traffic, and potential expansion of the facilities. It is anticipated that the low level of activity proposed will be compatible with neighboring residences and agricultural uses. The additional Bed & Breakfast use and the agricultural related activities proposed will have a few days and some hours of overlap with the previously approved Community Hall (Events Center) and Seasonal Camp. The property has adequate area, parking and other services to accommodate the proposed uses along with the existing approved uses. The Board has determined that the cumulative effect of this proposal together with activities previously approved for this property does not result in incompatibility with the surrounding area.

B. Outside a GMA district, the proposed use is consistent with the County Master Plan. The Larimer County Master Plan provides the general framework for land use within the County. The guiding principals of the Master Plan are implemented through the use of the zoning districts and regulations as well as through the application of development standards of the Larimer County Land Use Code (LUC). According to the FA (Farming) zone district of the LUC, a farm use is a use by right. Accessory agricultural uses are allowed if they can meet the standards listed in the LUC. One of the Master Plan Themes is "Agriculture will remain a viable long-term segment of Larimer County's economic, cultural and social fabric." Value Added Agriculture Processing and Agritourism were added as potential uses in an effort to achieve this goal.

C. The applicant has demonstrated that this project can and will comply with all applicable requirements of this Code. The applicant has provided information to demonstrate that the proposal has the ability to comply with the applicable regulations including the standards of Section 8 (Standards for All Development) of the Larimer County Land Use Code as follows:

Section 8.1 Adequate Public Facilities The purpose of this section is to ensure that all development is served by utilities and other facilities needed for a development are in place or will be installed by the developer before they are needed.

Sub-Section 8.1.1 Sewage Disposal Level of Service Standards: Sewer services are currently provided by the use of on-site septic systems. There is a system for the existing residence and another for the approved Event Center/Camp facility. The Department of Health and Environment (memo from Doug Ryan dated April 23, 2015) indicated the addition of food and beverage processing will involve the need to evaluate wastewater treatment capacity. An additional system is proposed to serve the VAAP and Agritourism enterprise. The applicant has provided information to Doug Ryan to demonstrate feasibility for this stage of the process. Additional information and permitting will be required at later stages in the process.

Sub-Section 8.1.2 Domestic Water Level of Service Standards: The Department of Health and Environment (memo from Doug Ryan dated April 23, 2015) indicated that the June 10, 2015 letter from the City of Fort Collins is adequate to demonstrate that there is sufficient water capacity for the proposed activities.

Sub-Section 8.1.3 Drainage Level of Service Standards: The Engineering Department (memo from Traci Shambo dated July 9, 2015) indicates that the nature and size of the proposed improvements are not expected to have any off-site drainage or erosion impacts.

Sub-Section 8.1.4 Fire Protection & Emergency Medical Level of Service Standards: The Poudre Fire Authority provides fire protection services to the site. Comments from the Fire Department memo from Jim Lynxwiler dated July 10, 2015) indicate that fire access is satisfactory. The water supply available to the proposed building is out of compliance with the Department's standards; however, the Department is agreeable to the application moving forward with the understanding that any additional development will likely trigger the installation of a fire hydrant. Construction of the tasting room and processing building will need further review and approval. Comments from Stan Griep, Building Department dated June 12, 2015 indicate there are also building code requirements which will need to be addressed at the Building Permit phase of the project.

Sub-Section 8.1.5 Road Capacity and Level of Service Standards: The standards in this section help to ensure that a development will have safe and adequate access to public roads and transportation related services and that the development does not create a demand for additional public improvements or services that cannot be met with existing public resources. Comments from Engineering (memo from Tracy Shambo dated July 9, 2015) identify no issues or concerns at this time.

Section 8.2 Wetland Areas: County maps indicated there may be potential wetland areas along the ditch. However, the farm use is allowed by right and the proposed structures are located in previously disturbed areas so no additional impacts are anticipated.

Section 8.3 Hazard Areas: Geologic hazards are mapped as low in this area of the County.

Section 8.4 Wildlife: No wildlife concerns have been identified at this time. Colorado Parks and Wildlife (letter from Mark Leslie, dated April 10, 2015) provided suggestions with regard to deer and bear interactions.

Section 8.5 Landscaping: The site has existing landscaping. Additional screening is not required.

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Section 8.6 Private Local Access Road and Parking Standards: Comments from Engineering (memo from Tracy Shambo dated July 9, 2015) identify no issues or concerns at this time. Ms. Shambo provided comments with regard to the parking area and scheduled deliveries.

Section 8.8 Irrigation Facilities: Comments were received from the Pleasant Valley and Lake Canal Company (letter from Alden V. Hill dated June 26, 2015). The Company has no objections to this project.

Section 8.11 Air Quality Standards: Not applicable.

Section 8.12 Water Quality Management Standards: Comments from Engineering (memo from Tracy Shambo dated July 9, 2015) identify no issues or concerns at this time.

Section 8.15 Site Lighting: No lighting is proposed at this time.

Section 8.16 Fences: No fencing is proposed with this application. All fencing must meet the requirements of this section of the Land Use Code. Any fence over 6' high will require a building permit.

D. The proposed use will not result in a substantial adverse impact on property in the vicinity of the subject property. It is not anticipated that the proposed uses would have substantial adverse impacts in the neighborhood.

E. The recommendations of referral agencies have been considered. The request has been sent to a variety of referral agencies and departments and the comments received from these agencies have been considered and addressed as appropriate.

F. The applicant has demonstrated that this project can meet applicable additional criteria listed in the section 4.3 use descriptions. The use descriptions for the proposed uses as described in Section 4.3 of the Land Use Code include standards for both VAAP and Agritourism can be met as follows:

Additional LUC Section 4.3 criteria:

Section 4.3.10.A.3.b. Value Added Agricultural Processing and sales of value added agricultural products produced on the site must meet the following criteria:

1. *The agricultural processing or sales facility must be clearly incidental to and supportive of the dominant agricultural use of the site.* The agricultural use will include the cultivation and packing of aronia berries and grapes. Processing is directly related to the agricultural use because those fruits will be transformed into other products. Additional product will be transported to the site for processing. The processing activity will need to remain accessory to the agricultural use. If processing becomes the dominant activity at some point in the future, the business will need to relocate to an appropriately zoned area.
2. *The agricultural processing and sales facility must be operated by the owner or lessee of the agricultural use.* The property owner will operate the use.
3. *Any processing operation will be located at least 100 feet from property lines unless a greater setback is required by another section of this code.* The processing area in the new proposed structure is located 225 feet from property lines. Processing done in the kitchen area of the multi-purpose room will also be located more than 100 feet from property lines.
4. *The processing and/or sales facility, any outdoor storage in connection with the facility, and on-site parking will be effectively screened from existing dwellings within 500 feet.* There is existing landscaping in place to screen the proposed VAAP.
5. *The hours of operation are limited to the hours between 7:00 am and 9:00 pm.*
6. *Noise, fumes, dust, odors, vibration or light generated as a result of the agricultural processing or sales will, at the property line, be below the volume, frequency, or intensity such that they do not unreasonably interfere with the enjoyment of life, quiet, comfort or outdoor recreation of an individual of ordinary sensitivity and habits.* According to the application materials virtually all of the activities associated with the VAAP will take place indoors. The "by right" agricultural and packaging operations are not subject to this standard.
7. *The facility or operation will serve to preserve or enhance the rural character of the neighborhood or vicinity.* The proposed facility will be constructed of materials similar to those used currently on the site. The operation will preserve an existing agricultural use on the property. The Board of County Commissioners finds that the proposed use will preserve or enhance rural character.
8. *The agricultural processing or sales facility will not significantly change the character of the neighborhood.* As proposed the VAAP should not significantly change the character of the neighborhood.

9. *The processing facility will not be classified as a hazardous waste generator under state or federal regulations. According to the application materials the facility will not produce or have hazardous waste.*
10. *Sales of products in addition to those grown or processed on the site will be limited to those clearly incidental, secondary and ancillary to those farm products or as declared and approved as a part of the Minor Special Review or Special Review process. The products produced may be sold on site.*

Section 4.3.10.A.4.b. The agritourism enterprises must meet the following criteria:

1. *The agritourism enterprise will be clearly incidental to and supportive of the dominant agricultural use of the site. The agritourism activities proposed will be supportive of the agricultural use.*
2. *The agritourism enterprise will be operated by the agricultural facility owner or lessee. The property owner will operate the use.*
3. *Any outdoor activity will be located at least 100 feet from property lines. Application materials indicate that proposed activities will take place at least 100 feet from property lines.*
4. *The hours of operation are limited to the hours between 7:00 am and 9:00 pm. Hours are proposed from 7 a.m. to 9 p.m.*
5. *Noise, fumes, dust, odors, vibration or light generated as a result of the agritourism enterprise will, at the property line, be below the volume, frequency, or intensity such that they do not unreasonably interfere with the enjoyment of life, quiet, comfort or outdoor recreation of an individual of ordinary sensitivity and habits. According to the application materials there will be no fumes, dust, odors, vibration generated by the activities. Noise and light will be commensurate with the proposed outdoor activities and are not anticipated to interfere with enjoyment of life, quiet, comfort or outdoor recreation of an individual of ordinary sensitivity and habits.*
6. *The agritourism enterprise and operation will serve to preserve or enhance the rural character of the neighborhood or vicinity. The proposed Agritourism activities are consistent with the Master Plan theme for agriculture to remain a viable long-term segment of Larimer County's economic, cultural and social fabric. Ultimately the Board of County Commissioners will need to determine whether the proposed use will preserve or enhance rural character.*

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7. *The agritourism enterprise and facilities will not significantly change the character of the neighborhood.* The activities and facilities proposed will likely have a minimal impact on the neighborhood due to the low level of activity proposed.
8. *The scale and intensity of the agritourism enterprise and facilities must be consistent with the character of the area.* The area and property contain a mixture of uses. At the activity level proposed the agritourism activities will likely be of a scale and intensity that has minimal impacts.
9. With respect to Applicant's Appeal to Section 10.10.A.3 (Sign Code), the applicant has submitted a request for an off-premise sign to identify the premises at Bingham Hill Road. They have identified safety concerns associated with lack of property identification (currently the mailbox is the only identification for the property). The applicant has identified 4 options for signage. Two of the options identified (Rural Property Identification Sign & Agricultural Product Signs) are not applicable since the signs would need to be located on the property, not Bingham Hill Road as the property does not have frontage on Bingham Hill. The other options are an Off-Premise Sign or a Tourist Oriented Direction Sign (TODS). The Engineering Department has indicated that the uses identified may meet the criteria for allowance of a TODS sign. If the uses are approved the applicant can apply for a TODS sign.
10. Review Criteria for Appeals from section 10 (signs) have been met/not met as follows:
 - A. *Approval of the appeal is consistent with the purpose and intent of this code;* Approval of the appeal would be inconsistent with the purpose and intent of this code because Billboards, Off-Premise signs are specifically prohibited from all zoning districts.
 - B. *There are extraordinary or exceptional conditions on the site which would result in a peculiar or undue hardship on the property owner if section 10 of this code is strictly enforced;* There are no extraordinary or exceptional conditions that would result in a hardship. If no sign is erected there may be undesirable impacts on neighboring properties from deliveries or visitors going to the wrong property. In addition, it appears that the TODS sign option provides an acceptable alternative.
 - C. *Approval of the appeal would not result in an economic or marketing advantage over other businesses which have signs which comply with section 10 of this code.* It is not anticipated that approval of the appeal would result in an economic or marketing advantage over other businesses.

RESOLUTION

WHEREAS, the Board of County Commissioners has made its findings upon the petition and upon the recommendation of the Larimer County Planning Commission, which findings precede this resolution, and by reference are incorporated herein and made a part hereof; and

WHEREAS, the Board of County Commissioners has carefully considered the petition, evidence and testimony presented to it, and has given the same such weight as it in its discretion deems proper, and is now fully advised in the premises;

NOW, THEREFORE, BE IT RESOLVED that the petition for approval of the Colorado Aronia Special Review to include: Value-Added Agricultural Processing associated with farming aronia berries, grapes, and other similar fruit, Agritourism Enterprise associated with farming aronia berries, grapes, and other similar fruit, and a Bed & Breakfast accommodating up to 6 guests upon the property described on Exhibit "A" be and the same hereby is granted upon the following conditions:

1. This Special Review approval shall automatically expire without a public hearing if the use is not commenced within three years of the date of approval.
2. The Site shall be developed consistent with the approved plan and with the information contained in the Colorado Aronia Project Special Review, File #15-Z1970 except as modified by the conditions of approval or agreement of the County and applicant. The applicant shall be subject to all other verbal or written representations and commitments of record for the Colorado Aronia Project Special Review.
3. Failure to comply with any conditions of the Special Review approval may result in reconsideration of the use and possible revocation of the approval by the Board of Commissioners
4. This application is approved without the requirement for a Development Agreement.
5. In the event the applicant fails to comply with any conditions of approval or otherwise fails to use the property consistent with the approved Special Review, applicant agrees that in addition to all other remedies available to County, County may withhold building permits, issue a written notice to applicant to appear and show cause why the Special Review approval should not be revoked, and/or bring a court action for enforcement of the terms of the Special Review. All remedies are cumulative and the County's election to use one shall not preclude use of another. In the event County must retain legal counsel and/or pursue a court action to enforce the terms of this Special Review approval, applicant agrees to pay all expenses incurred by County including, but not limited to, reasonable attorney's fees.

6. County may conduct periodic inspections to the property and reviews of the status of the Special Review as appropriate to monitor and enforce the terms of the Special Review approval.
 7. This Findings and Resolution shall be a servitude running with the Property. Those owners of the Property or any portion of the Property who obtain title subsequent to the date of recording of the Findings and Resolution, their heirs, successors, assigns or transferees, and persons holding under applicants shall comply with the terms and conditions of the Special Review approval.
 8. The applicant shall pay the Transportation Capital Expansion Fees (TCEF) to the Larimer County Engineering Department before the use commences, or within 120 days of the recordation of the Findings and Resolution approving the Special Review, whichever occurs first.
 9. Expansion of the proposed Value Added Agricultural Processing, Agritourism or Bed & Breakfast uses will require additional Special Review approval.
 10. The applicant shall comply with the requirements of the Poudre Fire Authority as outlined in the memo from Jim Lynxwiler, dated July 10, 2015. Construction of the tasting room and processing building will need further review and approval.
 11. The applicant shall comply with the requirements of the Health Department as outlined in the memo from Doug Ryan, dated April 23, 2015.
 12. This Special Review Approval shall permit applicant to grow, package and process aronia berries as well as grapes and other similar fruits.
 13. Applicant shall not be permitted to have weddings exceeding the 22 approved by a prior Special Review in the guise of an agritourism event.
- BE IT FURTHER RESOLVED that the Appeal to Section 10.10.A.3 of the Larimer County Land Use Code shall be and is hereby denied.

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Commissioners Johnson, Donnelly and Gaiter voted in favor of the Findings and Resolution, and the same were duly adopted.

DATED this 3 day of November, 2015.

BOARD OF COMMISSIONERS OF
LARIMER COUNTY, COLORADO

By: _____

Chair

(SEAL)

ATTEST:

Amey Dam
Deputy Clerk



DATE: 10-20-15
APPROVED AS TO FORM:

COUNTY ATTORNEY

Maas

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Exhibit A

LEGAL DESCRIPTION

Tract 2, Pope MRD 96-EX0850, Amended 20090073363