

**Kuhn
vs
Deschutes County Assessor Scot Langton**

MD-150093D Ex# 7 Pgs# 4

2 - 3 November 2015

7

ORS 308.205 Real Market Value Defined

<http://www.oregonlaws.org/ors/308.205>

§ 308.205¹

Real market value defined

- rules

(1) Real market value of all property, real and personal, means the amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller, each acting without compulsion in an arms-length transaction occurring as of the assessment date for the tax year.

(2) Real market value in all cases shall be determined by methods and procedures in accordance with rules adopted by the Department of Revenue and in accordance with the following:

(a) The amount a typical seller would accept or the amount a typical buyer would offer that could reasonably be expected by a seller of property.

(b) An amount in cash shall be considered the equivalent of a financing method that is typical for a property.

(c) If the property has no immediate market value, its real market value is the amount of money that would justly compensate the owner for loss of the property.

(d) If the property is subject to governmental restriction as to use on the assessment date under applicable law or regulation, real market value shall not be based upon sales that reflect for the property a value that the property would have if the use of the property were not subject to the restriction unless adjustments in value are made reflecting the effect of the restrictions.

[Amended by 1953 c.701 §2; 1955 c.691 §§1, 2; 1977 c.423 §2; 1981 c.804 §34; 1989 c.796 §30; 1991 c.459 §88; 1993 c.19 §6; 1997 c.541 §152]

Industrial Property Valuation for Tax Purposes

(1) For the purposes of this rule, the following words and phrases have the following meaning:

(a) A "unit of property" is the item, structure, plant, or integrated complex as it physically exists on the assessment date.

(b) "Real property" means the real estate (physical land and appurtenances including structures, and machinery and equipment erected upon the land or attached to the land or structures) and all interests, benefits, and rights inherent in the ownership of the physical real estate.

(c) "Highest and best use" means the reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, and financially feasible, and that results in the highest value. See The Appraisal of Real Estate, 12th edition (2001).

(2) If the highest and best use of the unit of property is an operating plant or an operating integrated complex, the real market value will be considered to be a "going concern." The going concern concept recognizes that the value of an assembled and operational group of assets usually exceeds the value of an identical group of assets that are separate or not operational.

(3) Methods and Procedures for Determining the Real Market Value of Industrial Property:

(a) For the valuation of industrial property all three approaches sales comparison, cost, and income, must be considered. For a particular property, it may be that all three approaches can not be applied, however, each must be investigated for its merit in each specific appraisal.

(b) The market value of a unit of property must not be determined from the market price of its component parts, such as wood, glass, concrete, furnaces, elevators, machines, conveyors, etc., each price separately as an item of property, without regard to its being integrated into the total unit.

(c) In utilizing the sales comparison approach only actual market transactions of property comparable to the subject, or adjusted to be comparable, will be used. All transactions utilized in the sales comparison approach must be verified to ensure they reflect arms-length transactions. When non-typical market conditions of sale are involved in a transaction (duress, death, foreclosure, bankruptcy, liquidation, interrelated corporations or persons, etc.) the transaction will not be used in the sales comparison approach unless market-based adjustments can be made for the non-typical market condition.

(d) Properties utilized in the sales comparison approach, although not necessarily identical, at the very least must be similar in many respects. Adjustments must be made for differences in location, product, production capacity, and all other factors that may affect value. Excessively large adjustments or an excessive number of adjustments is an indication that the properties are not comparable.

(e) When utilizing the sales comparison approach, the appraiser must take into consideration difference between the subject and the comparable properties for physical condition, functional obsolescence and economic obsolescence. Adjustments must be made for differences between the subject and comparable properties for factors such as physical condition, functional deficiencies, operating efficiency, and economic obsolescence. If the properties are functionally or economically equivalent, verification of the equivalency must be included in the appraisal.

(f) Sales for the disposal of properties through auction, liquidation or scrap sales are indicators of market value only when on the assessment date such disposal of the subject property is imminent, or has actually taken place.

(g) The cost approach may utilize either the reproduction, replacement, or the used equipment technique. It is acceptable to use trended historical cost to estimate the reproduction cost new. The value estimate must include all costs required to assemble and construct the unit of property.

(h) When using the income approach, the income from the operation of the property may be utilized for industrial properties and other properties that are not typically leased or rented. When the income from the property's operation is used, the unit of property must be valued as a going concern. In utilizing the income

approach for the valuation of industrial properties, the discounted cash flow technique is one of the appropriate methods to derive a value estimate. Consideration in the discounted cash flow technique is given to items such as the anticipated free cash flow available to the debt and equity holders, inventory valuation methods, intangible assets, income taxes, net working capital, capital reinvestment, etc. When utilizing the discounted cash flow technique, the capitalization or discount rate must be derived in accordance with OAR 150-308.205-(C).

(i) Determining the highest and best use for the unit of property is necessary for establishing real market value. This determination of highest and best use may include, among others, all possible uses that might result from retaining, altering or ceasing the integrated nature of the unit of property.

(4) Basic information for an appraisal. Basic data and procedures in making appraisals normally include the following when applicable:

(a) Location of property by tax codes and tax lot numbers;

(b) Map or sketch of land owned and layout of plant;

(c) Inventory of physical plant;

(d) Reproduction or replacement cost computations, as applicable;

(e) Analysis of depreciation;

(f) Analysis of economics as they affect valuation;

(g) Analysis of sales data, when applicable;

(h) Field inspection;

(i) Research and familiarization with typical properties of the industry;

(j) Annual reports to stockholders;

(k) Fixed assets schedules;

(l) Income statements;

(m) Such other data that may affect value.

(5) Basic information for an appraisal utilizing the annual report method. Basic data for an appraisal utilizing the annual report method normally includes the following:

(a) Report of additions;

(b) Report of retirements;

(c) Knowledge of miscellaneous technical and economic conditions that affect value;

(d) Trending factors:

(A) Separate factors for yard improvements, buildings, and equipment classified as real property must be developed.

(B) The development of the factors must use data published by the United States Department of Labor, the Oregon Building Construction Trades Council, and other sources the Department of Revenue deems to be reliable indicators of property value over time.

(C) Data developed by physical inspection together with appraising a segment of the total property or making a general review of the total value under certain circumstances may supplement the data utilized in (A) above.

(e) Depreciation allowances;

(f) Real market value for prior year.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.205

Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

Search Results when searching for **ORS 308.205(d)**

250 document(s) found.

	Case Title	Case Number	Date Filed
76%	LYDON-ALBANY, LLC v. LINN COUNTY ASSESSOR	040144F	10/29/2004
74%	Martin v. Yahmill County Assessor	110246D	09/01/2011
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71%	RICHARD L. RODE and LINDA P. RODE v.	040238F	10/29/2004

Kuhn
vs
Deschutes County Assessor Scot Langton

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HEARINGS OFFICER

DESCHUTES COUNTY COURTHOUSE

BEND, OREGON 97701

TELEPHONE (503) 382-4000, EXT. 223

FINDINGS AND DECISION

FILE NO:

CU-80-22

APPLICANT:

John Barton

REQUEST:

An application for a conditional use permit to allow a cluster development for two lots in a F-3, Forest Use Zone with a WA, Wildlife Area Combining Zone, and LM Landscape Management Combining Zone.

PLANNING STAFF
RECOMMENDATION:

Approval with conditions

PLANNING STAFF
REPRESENTATIVE:

Craig Smith

PUBLIC HEARING:

Public Hearing was held in the Deschutes County Justice Building, Bend, Oregon, on March 25, 1980 at 7:00 P.M. An oral decision was rendered at that time.

BURDEN OF PROOF:

In order to receive approval on this conditional use application the applicant must be in conformance with Article 8, Section 8.050 (15) of PL-15 of the Deschutes County Zoning Ordinance and Article I, Section 1.030 (25A) of PL-15. In addition must meet the conditions of Procedural Ordinance PL-9, Section 6.000.

FINDINGS:

A. Subject Property:

1. Location:

The subject property is located westerly of Sisemore Road, approximately one mile north of the Old Tumalo Dam and is further described as Tax lot 1414, Township 16 south, Range 11 east, Section 19.

2. Zone:

F-3, Forest Use Zone with a WA, Wildlife Area Combining Zone.

3. Comprehensive Plan Designation:

Agricultural and the Deschutes County Resource element of the plan designates the subject property to be within the deer winter range.

4. Site Description:

The subject property is approximately 43 acres in size, and has a rock ledge which runs east and west across approximately the middle of the property. The property is within the Tumalo Winter Deer Range.

Access will be provided to each lot by Sisemore Road, a county road. The surrounding property is zoned F-3, Forest Use and is within the WA, Wildlife Area and Landscape Management Combining Zones, as well as all surrounding property.

CONCLUSIONS:

- A. The goals of Deschutes County Year 2,000 Plan concerning rural development on page 49 states:
- "a. To preserve and enhance the open spaces, rural character, scenic values and natural resources of the County.
 - b. To guide the location and design of rural development so as to minimize the public costs of facilities and services, to avoid unnecessary expansion of service boundaries and to preserve and enhance the safety and viability of rural land uses.
 - c. To provide for the possible long-term expansion of urban areas while protecting the distinction between urban (urbanizing) lands and rural land uses."

In addition the goals and policies of the Comprehensive Plan Year 2,000 concerning Fish and Wildlife indicate in part that the goals are:

- a. To preserve and protect existing fish and wildlife area.
 - b. To maintain all species at optimum levels to prevent serious depletion of indigenous species.
 - c. To develop and manage the lands and waters of this country in a manner that will enhance, where possible, the production and public enjoyment of wildlife.
- B. Certainly one of the more controversial issues in the County has been the deer winter ranges. Within the winter ranges the minimum lot size shall be 40 acres. Planned developments (including cluster developments) may be permitted on parcels 160 acres or larger in size. However, man's activities must be limited to 20 percent of the development's lands with 80 percent left as open space. In the case of planned developments the density shall be determined by the underlying zone.
- C. The applicant is in conformance with LCDC Goals which are applicable as follows:

Goal Three - Agricultural Lands - not applicable. The subject property is within the Deschutes-Deskamp and Gosney-Deschutes soil associations. These soils are generally considered Class VI soils without irrigation. Therefore, this goal is not applicable to this case.

Goal Four - Forest Lands - The subject is considered a low timber productivity rating the Deschutes County Resource Element.

Goal Thirteen - Energy Conservation - The approval of this application will allow one additional dwelling on the property, therefore, the impact would be minimal.

DECISION:

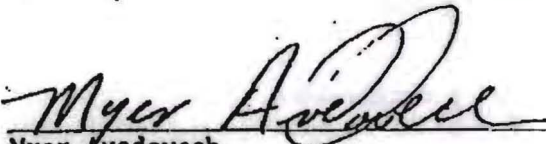
MD-150093D Ex# 8 Pg# 2

Approval subject to the following conditions:

To Bankers re loan Homeowners Agreement History.pdf

1. The applicant shall receive an approved partition for two residential lots, with the remaining lot to be held in joint ownership prior to the sale of any lots.
2. Prior to the sale of any lot a written agreement shall be recorded which establishes an acceptable homeowners association or agreement assuring the maintainance of common property in the partition.
3. The common area shall not be used for any residential dwelling.
4. Any buildings shall conform to section 4.180 concerning the Landscape Management Combining Zone of PL-15.
5. All necessary permits shall be received prior to the construction of any buildings.
6. This development will be in accordance with the Year 2,000 Comprehensive Plan as it relates to the open space and dedication of that open space as required.

DATED this 3rd day of April, 1980.


Myer Avedovech
HEARINGS OFFICER

MA:ch

cc: file
John Barton
Planning Commission
Planning Department

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To Bankers re loan Homeowners Agreement History.pdf

CIL-80-22 - JOHN BARTON

WILLIAM JOHN KUHN & MARTHA LEIGH KUHN
Post Office Box 5996 Bend, Oregon 97708-5996 (503) 389-3676 389-5483

4 June 1987

Denyse McGriff - CDD - Planning Division	(503) 388-6575
Jeb Barton - Owner and Seller	(503) 388-1854
Mark Burchett - Neighboring Affected Owner	(503) 382-5893
Bend OR 97701	

Dear Denyse McGriff, Jeb Barton, and Mark Burchett,

We are asking for a lot line adjustment prior to the purchase of Jeb's Sisemore Rd property.

We desire to purchase a buildable lot and do not wish to buy anything that will prohibit the placement of a home at the top of the hill just to the west of the old test pit. We are asking the CDD department to deny the application if this is not the case.

We wish to have a southern exposure for a solar designed home, since the original site was mostly a ridge facing north west. We also wanted less impact on the Tumalo Winter Deer Range, by moving the building site closer to the road we cause less impact on their natural habitat. Bringing the back part of the property up closer to the road we can also deal with the side lot problems mentioned by Denyse and Karen. It also allows us to have the septic system near the house rather than down in the valley below.

Once we have your approval we will then be able to have Mr. Colvin proceed with his survey.

We appreciate your consideration on all this.

Sincerely,



William John Kuhn
Martha Leigh Kuhn
CDD8706.ws4

MD-150093D Ex# 8 Pg# 4

APPLICATION FOR A LOT LINE ADJUSTMENT

APPLICANT: William John Kuhn & Martha Leigh Kuhn PHONE: (503) 389-3676
 SITE ADDRESS: Sisemore Road ZIP CODE: 97701
 PROPERTY OWNER: John Barton PHONE: (503) 388-1854
 (if different)
 SITE ADDRESS: 17671 Snow Creek Road Bend ZIP CODE: 97701
 PROPERTY DESCRIPTION: T 16 R 11 S 19 Tax Lot: 200

ADJOINING PROPERTY INVOLVED IN THE LOT LINE ADJUSTMENT

PROPERTY OWNER: Mark Burchett PHONE: (503) 382-5893
 SITE ADDRESS: Sisemore Road ZIP CODE: 97701
 PROPERTY DESCRIPTION: T 16 R 11 S 19 Tax Lot: 300
 GENERAL LOCATION: West side of Sisemore Road about 1 1/2 miles North of Tumalo Dam.

REASON FOR ADJUSTMENT: To have a southern exposure for a solar designed home, since original site was mostly a ridge facing northwest, we also wanted less impact on the Tumalo Winter Deer Range, by moving the building site closer to the road we cause less impact on their natural habitat.

PRESENT ZONE OF APPLICANT'S PROPERTY: F-3 (WA)(LM)
 PRESENT ZONE OF ADJOINING PROPERTY: F-3 (WA)(LM)
 PRESENT AREA OF APPLICANT'S PROPERTY: appx 4.3 Acres
 AREA OF APPLICANT'S PROPERTY AFTER ADJUSTMENT: appx 4.3 Acres
 PRESENT AREA OF ADJOINING PROPERTY: appx 34.6 Acres
 AREA OF ADJOINING PROPERTY AFTER ADJUSTMENT: appx 34.6 Acres

PLEASE ATTACH A MAP DRAWN TO SCALE

***** NOTE *****
 The proper form, signed by a representative of the County Assessor's Office, shall be attached, certifying:

- 1) All taxes for parcels are paid in full;
- 2) The deeds are in the same name for all parcels to be adjusted or consolidated;
- 3) Accurate legal descriptions have been prepared for all adjustments.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

William John Kuhn Martha Leigh Kuhn
 Applicant's Signature

5 June 1987
 Date

Mark Burchett John Barton
 Property Owner's Signature

5 June 1987
 Date

THIS APPLICATION MUST BE PROCESSED WITHIN THE 120-DAY DEADLINE

OFFICE USE ONLY MD-150093D Ex# 8 Pg# 5

FILE NUMBER: 44-87-21

DATE SUBMITTED: 6-5-87

APPROVED/DENIED

Mark Shipman
 Planner

6-18-87
 Date



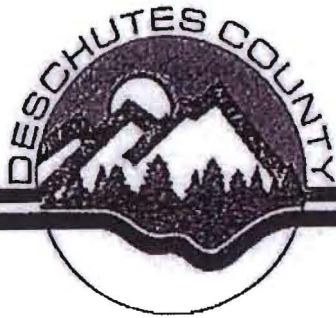
RECEIVED BY: C.A. McLean

PAID: \$35.00

SCANNED # 32720

OCT 27 2009
LM 887
44 8721

19870619 shipman Letter Re deed restrictions required before building permit



FILE COPY

Community Development Department

Administration Bldg. / Bend, Oregon 97701
(503) 388-6575

June 19, 1987

Planning Division
Building Safety Division
Environmental Health Division

Mr. and Mrs. William Kuhn
60780 River Bend Drive
Bend, Oregon

RE: Lot Line Adjustment LL-87-21

Dear Mr. and Mrs. Kuhn:

We have approved your lot line adjustment application subject to the following condition:

1. Prior to the issuance of a building permit, the deed restrictions to the Cluster Development on CU-30-22 shall be recorded with the Descutes County Clerk to run with parcels 1, 2, & 3 of that land use application.

We were not able to find that these restrictions were recorded with the parcels. This was a condition of approval on the conditional use permit.

If you have any concerns or questions, please contact this office.

Sincerely,

DESCUTES COUNTY PLANNING DIVISION
Craig J. Smith, Director

Mark D. Shipman
Mark D. Shipman
Assistant Planner

MDS/cd
CP3-22

cc: John Barton
Mark Burchett
Denyse McGriff

Note:

The Deed Restrictions were NOT a condition of approval. They were however mentioned in the application process.

It was the Homeowners' Agreement that was a condition of approval.

CDD should have asked for a Homeowners' Agreement.

To Bankers re loan Homeowners Agreement History.pdf

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William John Kuhn

PO Box 5996 Bend, Oregon 97708-5996

Martha Leigh Kuhn

Phone: (541) 389-3676

Wednesday 15 January 1997

Dennis Perkins, Director
Deschutes County Building Department
Administration Bldg.
Bend, Oregon 97701

w 541 388 6576



Regarding B34821 at 65595 Sisemore Road.

Dear Dennis,

In 1988 when we submitted our plans to the county we were asked to provide a copy of the Home-owners Maintenance Agreement on the common property (tax lot 300) owned by us and our neighbors. The request was made by Mark Shipman, Assistant Planner under Craig J. Smith, Planning Director before the county would proceed with any permits. A copy of the county's request is attached.

In 1990 the Dowell's purchased their building site and their half of the jointly owned land. Please note that the Dowell's purchase agreement does not cover the provisions required by the original CU-80-22 dated 3 April 1980 and signed by Myer Avedovech, Hearings Officer.

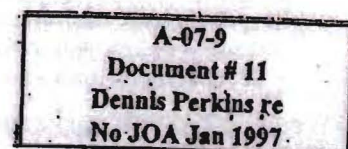
When the Dowell's applied for their permits, did they provide you with a copy of the Home-owners Maintenance Agreement? If the county does have this agreement on file then we would like a copy of the agreement that was submitted. Presumably our names are on it and we should be able to have a copy of something we signed. (Why would the county require us to submit a copy and not require the Dowell's to submit a copy?) If you do not have a copy of their Agreement are you the county using the agreement that was submitted by us in 1988. If you are then we would like to have a copy of that agreement and a letter from you that says you are using that document even though it does not have the Dowell's signature on it.

If there is no agreement on record we ask that you not proceed with any current permits, and we ask that you not approve any further permits until you have received a copy of a Home-owners Maintenance Agreement signed by both the Dowell's and us.

Sincerely,

William John Kuhn
WJK/k

The County told us we had to file a complaint - we did. The County could have acted prior to the final approval - they didn't.



970115 07:41

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Page 1 of 1

MD-150093D Ext# 8 Pg# 7

William John Kuhn

Martha Leigh Kuhn

PO Box 5996 Bend, Oregon 97708-5996

Phone: (541) 389-3676

Thursday 30 September 2004

David DeCoursey, VP DesCo Manager
First American Title Insurance Company of Oregon
395 SW Bluff Drive Suite 100
Bend, OR 97702

ddecoursey@FirstAm.com
w 541 382 4201
fax 541 389 5431

Re: Policy #D-106814-E and Loss of Ability to Economically Benefit from the Sale of Our Property because of having a deed to a parcel that apparently does not legally exist, and a title that may not exist.

Dear David DeCoursey,

Our properties are located at 65575 Sisemore Road and our location is Township 16 - Range 11 - Section 19, NE corner tax lots 200 and 300 at mile marker 3.3 on Sisemore Road.

This September we found out that according to both County Ordinance and State Law, we cannot sell our property based on Deschutes County's oversight of never recording the final plat map for MP-79-232, as they were required to do. We believe that during the MP-79-232 and CU-80-22 process the County may have negligently misrepresented itself in granting a cluster development to John E. Barton on his original parcel. A contract was entered into by Mr. Barton with the County. By failing to record the MP-79-232 map the County never completed their end of the contract.

It may or may not be true that because the County has allowed permits and a conditional use on our property, we could withhold the recently discovered information and sell the property; however, based on ORS 92.018 it would be possible that we could be held liable for damages to the buyer of these properties. Any involved realtor, insurance company, etc. possibly could also be held liable.

Deschutes County Chapter 17.24.150. Recording. *A. No plat shall have any force or effect until it has been recorded. No title to property described in any dedication on the plat shall pass until recording of the plat.*

ORS 92.025 Prohibition of sale of lot or conveyance of interest in parcel prior to recordation of plat; waiver. *(1) No person shall sell any lot in any subdivision or convey any interest in a parcel in any partition until the plat of the subdivision or partition has been acknowledged and recorded with the recording officer of the county in which the lot or parcel is situated.*

ORS 92.018 Buyer's remedies for purchase of improperly created lot or parcel. *(1) A person who buys a lot or parcel that was created without approval of the appropriate city or county authority may bring an individual action against the seller in an appropriate court to recover damages or to obtain equitable relief. The court may award reasonable attorney fees to the prevailing party in an action under this section.*

We believe that if our properties were to be sold today without this major defect they would bring a sale price of somewhere between \$600,000 and \$1,100,000 based on acreage and view.



It is not acceptable to us to have any assurances or warranties from the County less than the recording of the map with full force and authority to all aspects and rights of the map as it was created for the MP-79-232 as required by both Deschutes County code and state statutes. Although First American Title Insurance Co may consider we have a title since we have a deed, it is essentially a title and deed to something that doesn't exist as a legally recognized property. Also, we can't pass this title to anyone, apparently including heirs or charitable organizations. According to Deschutes County Chapter 17.24.150 quoted above, where does this leave us regarding the validity of our title?

Sincerely,



William John Kuhn

WJK/k





First American Title Insurance Company of Oregon

An assumed business name of TITLE INSURANCE COMPANY OF OREGON

395 SW Bluff Drive, Suite 100

P.O. Box 323, Bend, Oregon 97709

Phone: (541) 382-4201 • Fax: (541) 389-5431

October 4, 2004

Mark Pilliod, County Council
Deschutes County
1130 NW Harriman St
Bend, Oregon 97701

Re: William and Lee Kuhn

Dear Mark,

I have been contacted by William and Lee Kuhn. They have property on Sisemore Road that was created by Minor Partition 79-232.

Their concern is that their Minor Partition was never recorded with the County Clerk, in accordance with the County Ordinances in place at the time. There appear to be literally hundreds of Partitions which were approved but never recorded.

From my perspective at County Manager for First American Title I see this as a potential problem in that there are partitions that reflected restrictions, easements and or right of ways and other specific items that are not shown elsewhere of record. Literally, recording was to give constructive notice of these items.

William and Lee have sought to have their partition recorded and have to this point been rebuffed by the county in their efforts.

I must ask if there is a reason for this refusal, and further if there is a reason that the County has not administered their own Ordinances and recorded these partitions. I urge you to consider recording the partitions. I would think that at a very minimum some curative action should be taken by the county for legal recognition of the parcels created in the partitions.

I would welcome the opportunity to talk with you further concerning this issue, please feel free to call me at 382-4201.

Sincerely,

David R. DeCoursey, County Manager
First American Title Insurance Company of Oregon

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[To Bankers re loan Homeowners Agreement History.pdf](#)



Community Development Department

Planning Division Building Safety Division Environmental Health Division

117 NW Lafayette Avenue Bend Oregon 97701-1925
(541)388-6575 FAX (541)385-1764
<http://www.co.deschutes.or.us/cdd/>

CERTIFICATE OF MAILING

FILE NUMBER: A-09-4, A-09-5, A-07-9

DOCUMENT MAILED: BOCC Decision

MAP AND TAX LOT NUMBER(S): 16-11-19 Tax Lot 100

I certify that on the 24th day of February, 2010, the attached Staff Report, dated February 24th, 2010, was mailed by first class mail, postage prepaid, to the person(s) and address(es) set forth on the attached list.

Dated this 24th day of February, 2010.

COMMUNITY DEVELOPMENT DEPARTMENT

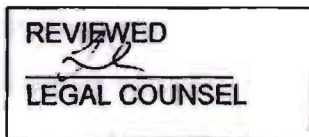
By: Bend Mailing Services

William and Martha Leigh Kuhn P.O. Box 5996 Bend, OR 97708	Robert S. Lovlien Bryant, Lovlien & Jarvis, PC P.O. Box 880 Bend, OR 97709
Pat and Jeff Dowell 10705 NE 38th Ave Vancouver, WA 98686	Pam Hardy 1629 NW Fresno Ave. Bend, OR 97701

MD-150093D Ex# 8 Pg# 11

To Bankers re loan Homeowners Agreement History.pdf

Quality Services Performed with Pride



For Recording Stamp Only

DECISION OF THE DESCHUTES COUNTY BOARD OF COMMISSIONERS

FILE NUMBER: A-09-4, A-09-5, A-07-9

APPELLANTS: William and Martha Leigh Kuhn
P.O. Box 5996
Bend, Oregon 97708

**APPLICANTS/
PROPERTY OWNERS:** Jeff and Pat Dowell
10705 N.E. 38th Ave
Vancouver, Washington 98686

**APPLICANTS'
ATTORNEYS:** Robert Lovlien
Helen Eastwood
Bryant Lovlien & Jarvis
P.O. Box 880
Bend, Oregon 97709

**APPELLANTS'
ATTORNEY:** Pamela Hardy
1629 N.W. Fresno Avenue
Bend, Oregon 97701

REQUEST: Appellants appeal a Hearings Officer decision reversing the Planning Division's decision to issue a LUCS and building permit to remodel the Dowells' existing dwelling on the subject property (A-07-9).

STAFF REVIEWER: Will Groves, Senior Planner

RECORD CLOSED: November 6, 2009

I. APPLICABLE STANDARDS AND CRITERIA:

A. Title 15 of the Deschutes County Code, Buildings and Construction

1. Chapter 15.04, Buildings and Construction Codes and Regulations

*** Section 15.04.150, Building or Mobile Home Placement Permit Issuance-Zoning and Subdivision Conformance**

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Document No. 2010-128

B. Title 18 of the Deschutes County Code, the Deschutes County Zoning Ordinance

- 1. Chapter 18.08, Basic Provisions**
 - * Section 18.08.010, Compliance**
- 2. Chapter 18.40, Forest Use Zone (F-2)**
 - * Section 18.40.020, Uses Permitted Outright**
- 3. Chapter 18.84, Landscape Management Combining Zone (LM)**
 - * Section 18.84.030, Uses Permitted Outright**
- 4. Chapter 18.88, Wildlife Area Combining Zone (WA)**
 - * Section 18.88.030, Uses Permitted Outright**
- 5. Chapter 18.144, General Provisions**
 - * Section 18.144.050, Violation**

C. Title 22 of the Deschutes County Code, the Development Procedures Ordinance

- 1. Chapter 22.04, Introduction and Definitions**
 - * Section 22.04.020, Definitions**
- 2. Chapter 22.16, Development Action Procedures**
 - * Section 22.16.010, Review of Development Action Applications**
 - * Section 22.16.030, Review of Development Action**
- 3. Chapter 22.24, Land Use Action Hearings**
 - * Section 22.24.030, Notice of Hearing or Administrative Action**
- 4. Chapter 22.32, Appeals**
 - * Section 22.32.010, Who May Appeal**
 - * Section 22.32.015, Filing Appeals**
 - * Section 22.32.020, Notice of Appeal**
 - * Section 22.32.050, Development Action Appeals**
- 5. Chapter 22.34, Proceedings on Remand**
 - * Section 22.34.020, Hearings Body**
 - * Section 22.34.030, Notice and Hearings Requirements**
 - * Section 22.34.040, Scope of Proceeding**

II. FINDINGS OF FACT:

The Board of County Commissioners ("Board") adopts and incorporates herein by reference the findings of fact proposed by the Hearings Officer in the August 17, 2009, decision, as revised and supplemented herein.

- A. Procedural History:** Procedural history prior to August 17th, 2009 is documented in the Hearings Officer's decision and is incorporated herein by reference. In a decision dated August 17th, 2009, the Hearings Officer reversed the Planning Division's decision to issue a LUCS and building permit to remodel Jeff and Patricia Dowells' existing dwelling on the subject property. A timely appeal was filed by the Dowells (A-09-4) on August 28, 2009 and by William and Leigh Kuhn (A-09-5) on August 31, 2009. In Order 2009-061, dated October 5, 2009 and incorporated herein by reference, the Board agreed to hear both appeals limited de novo, limited to the specific type of new evidence listed in the order. Pursuant to DCC 22.32.025, the appeals were consolidated and noticed and heard as one proceeding. As specified in Order 2009-061, the written record closed on November 6, 2009. On January 25, 2010, the Board deliberated and rendered a decision that is documented in this findings and decision document.

III. CONCLUSIONS OF LAW:

A. Adoption of Hearings Officer's Conclusions of Law

FINDINGS: The Board adopts and incorporates herein by reference the conclusions of law adopted by the Hearings Officer in the August 17, 2009, decision, as revised and supplemented herein.

MERITS OF APPEAL

B. Title 15 of the Deschutes County Code, Building and Construction

1. Chapter 15.04, Building and Construction Codes and Regulations

a. Section 15.04.150, Building or Mobile Home Placement Permit – Zoning and Subdivision Conformance

No building permit or mobile home placement permit shall be issued if the parcel of land upon which the building or mobile home is to be erected or located on, or is located on, would be in violation of DCC Title 17, the subdivision title or DCC Title 18, the zoning title. A subdivision shall be deemed in violation of the zoning ordinance for the purpose of issuing building permits so long as roads and other improvements remain uncompleted in accordance with the applicable subdivision provisions. (Emphasis added.)

FINDINGS: The Land Use Compatibility Statement (LUCS) and building permit subject to this appeal were issued pursuant to this section, which was adopted by the county to comply with the state agency coordination requirements of ORS 197.180 and OAR Chapter 660, Divisions 30 and 31. The above-underscored language in Section 15.04.150 states the review required by this code section is directed at determining the lawfulness of the *parcel* on which the building is to be located.

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The subject parcel was created as part of a cluster development and partition (CU-80-22/MP-79-232). The conditional use approval for the cluster development, CU-80-2, included a condition of approval that required:

2. Prior to the sale of any lot, a written agreement shall be recorded which establishes an acceptable homeowners association or agreement assuring the maintenance of common property in the partition.

Initially, the Board finds that PL-15 was the operative zoning ordinance when CU-80-2 was approved. PL-15 was later codified as Title 18. Thus, the Board finds that DCC 15.04.150(a) applies to the conditions of approval detailed in CU-80-2.

The Board finds that, while the property has been sold, no such homeowners association or agreement assuring the maintenance of common property in the partition has been recorded. The recorded deed restrictions, dated July 20, 1987, do not include provisions to assure the maintenance of common property in the partition nor do they create a homeowners association.

Although the condition was to be fulfilled prior to the sale of the property, the Board cannot ignore such a condition merely because the property was sold without fulfilling that condition. Many other land use decisions have included prior to sale conditions. To find that no violation occurred if they are not fulfilled prior to sale would render such conditions useless and superfluous. No applicant would take seriously any prior to sale condition knowing that the County will not enforce it if they ignore it.

The Dowells' requested building permit for an interior remodel of their existing dwelling is an alteration of a building in violation of a permit, specifically condition #2 of CU-80, which permitted both the creation of the subject parcel and the development of a dwelling on the subject parcel. The County's issuance of a building permit for the dwelling without that homeowner's agreement in place does not, however, automatically excuse the fulfillment of that condition. At the time, no official governing body decision on the matter had occurred and staff issued that sign-off using the best information they had at the time. The County is not obligated, however, to compound its previous mistakes in issuing a land use compatibility sign-off for the remodeling permit.

Therefore, the Board finds that the parcel violates DCC Title 18 because of the lack of the existence acceptable homeowner's association regulations or agreement between both property owners for the maintenance of the open space parcel. Because the parcel violates DCC Title 18, the issuance of the remodeling permit was also in error. Moreover, the Board finds that any existing building permits within the partition were issued unlawfully.

The Board finds that it must also determine the meaning of "acceptable." In this case, "acceptable" means acceptable to the County. That is not to say that the County will enforce the agreement. The County will review the agreement to determine that it "assures the maintenance of the common property."

C. Title 18 of the Deschutes County Code, the County Zoning Ordinance

1. Chapter 18.08, Basic Provisions

a. Section 18.08.010, Compliance

MD-150093D Ex# 8 Pg# 15

- A. A lot may be used and a structure or part of a structure may be constructed, reconstructed, altered, occupied or used only as DCC Title 18 permits. No new structure shall be constructed on any lot of less area than the minimum for the zone in which it is located, except as provided by DCC Title 18 and ORS 21.203 et. seq.

2. Chapter 18.40, Forest Use Zone – F-2

a. Section 18.40.020, Uses Permitted Outright

* * *

M. Alteration, restoration or replacement of a lawfully established dwelling that:

1. Has intact exterior walls and roof structure;
2. Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
3. Has interior wiring for interior lights;
4. Has a heating system; and
5. In the case of replacement, is removed, demolished or converted to an allowable use within three months of completion of the replacement dwelling.

3. Chapter 18.144, General Provisions

a. Section 18.144.050, Violation

The location, erection, construction, maintenance, repair, alteration or use of a building or structure or the subdivision, partitioning or other use of land in violation of this title or of any permit, land use approval or status determination issued or made under DCC Title 18 is a Class A violation.

FINDINGS: The subject parcel was created as part of a cluster development and partition (CU-80-22/MP-79-232). The Board found above that the parcel is in violation of DCC Title 18.

For this reason, the Board also finds that dwellings within the subject partition are not lawfully established until a written agreement is recorded that establishes an acceptable homeowners association or agreement assuring the maintenance of common property in the partition.

As for the issue raised by the Kuhns of the maximum setback from Sisemore Road for building the dwelling, no code provision existed in 1980 that established a maximum setback on the subject property.

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The record indicates, however, that Mr. Barton proposed a 400-foot maximum building setback from Sisemore Road in order to address the Oregon Department of Fish and Wildlife's (ODFW) concerns about protecting the Tumalo Deer Winter Range that was about to be, but had not yet been, designated on the county's comprehensive plan and protected through adoption of the WA Zone (which later included a 300-foot maximum building setback from roads). It is uncertain whether or not Mr. Barton proposed the maximum setback from the road, and showed it on the partition plat, in order to secure the county's approval of the partition and cluster development or merely as a gesture to ODFW.

Thus, it is doubtful that the 400-foot designation on the 1980 plat, by itself, would have been enforceable by the County. The Dowells, however, are now bound by that maximum setback because, in 1992, the Dowells submitted a Landscape Management (LM) site plan containing a notation that the dwelling would not be built beyond the 400-foot road setback in order to obtain site plan approval for their dwelling. Additionally, in that LM site plan approval decision, Deschutes County planner, Paul Blikstad found that the 400-foot designation was applicable to the property and that decision was not appealed--.

The record, however, includes a number of theories regarding which portions of the subject property fall within this 400-foot maximum setback:

- 1) The area between the line shown in Partition Plat 2004-80 labeled "Max. Bldg. Setback 400' from Sisemore Rd." and Sisemore Road.
- 2) All areas on the subject property within 400 feet of Sisemore Road, as measured from the subject property's frontage along Sisemore Road.
- 3) All areas on the subject property within 400 feet of Sisemore Road, as measured from all points on Sisemore Road, regardless of frontage.

The Board finds that the establishment of the Kuhn dwelling under County File No. LM-88-7 and Building Permit B26266 within the subject partition set a clear precedent for using measurements other than the line shown in Partition Plat 2004-80 as a basis of complying with the 400-foot maximum setback. The Board also notes that the purpose of a maximum road setback within a Wildlife Area is to minimize wildlife habitat fragmentation by keeping new residential development adjacent to existing roads. The Board finds that this goal is not advanced by arbitrarily tying the measurement of the 400-foot maximum setback to a specific segment of road frontage. Therefore, the Board finds that the 400-foot maximum setback includes all areas on the subject property within 400 feet of Sisemore Road, as measured from all points on Sisemore Road, regardless of frontage.

The record indicates that the Dowell dwelling falls within 400 feet of Sisemore Road, as measured from all points on Sisemore Road. Therefore, the Board finds that the Dowell dwelling complies with the 400-foot maximum setback.

IV. DECISION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Board affirms the Hearings Officer's August 17, 2009 decision to **REVERSE** the Planning Division's decision to issue a LUCS and building permit to remodel the Dowells' existing dwelling on the subject property but on different grounds as stated above.

MD-150093D Ex# 8 Pg# 17

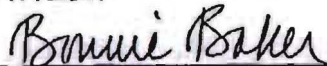
Dated this 22nd of February, 2010

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


DENNIS R. LUKE, Chair


ALAN UNGER, Vice Chair

ATTEST:


Recording Secretary


TAMMY BANEY, Commissioner

William Kuhn

From: "Dave Kanner" <Dave_Kanner@co.deschutes.or.us>
To: <william@riskfactor.com>
Sent: Wednesday, January 19, 2011 8:22 AM
Subject: Answer to your question
Mr. Kuhn (bcc: Board of Commissioners) –

At the Board of Commissioners meeting of January 12, you requested an answer to the following question:

“What is the proper process for me to follow to obtain a building permit in light of the County ruling that a homeowner’s agreement must be recorded with the County prior to the issuance of further building permits?”

The answer to your question is: You and the Dowells must submit and record a written homeowner’s association or homeowner’s agreement that is acceptable to the County, assuring the maintenance of the property in your partition. The agreement must be submitted to the Community Development Department, which will review it to determine that it assures the maintenance of the common property.

Once the County notifies you that the agreement is acceptable, you will need to provide the Community Development Department with proof of the recording of the agreement in the Deschutes County Official Records. Then, you can apply for the building permit by submitting the appropriate plans and permit fee deposit. The County Building Division can assist you with this last step.

You can submit the homeowner’s association document or homeowner’s agreement to the county at the same time as you submit the plans and fee for the building permit. The building permit, however, will be issued only after the County notifies you that the agreement is acceptable and you provide the Community Development Department with proof of the recording of the agreement in the Deschutes County Official Records.

Regards,

Dave Kanner
County Administrator
Deschutes County
1300 NW Wall St.
Ste. 200
Bend, OR 97701
541-388-6570
541-385-3202(fax)

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[To Bankers re loan Homeowners Agreement History.pdf](#)

1/19/2011

Kuhn
vs
Deschutes County Assessor Scot Langton

MD-150093D Ex# 9 Pgs# 2

2 - 3 November 2015

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20110207 email DEMO fee \$176.40.pdf

MD-150093D Ex# 9 Pg#

1**William Kuhn**

From: "Judy Hackett" <Judy_Hackett@co.deschutes.or.us>
To: <william@riskfactor.com>
Sent: Monday, February 07, 2011 10:25 AM
Subject: FW: 2 questions re DEMOs

Hello Bill,

You would need a demolition permit from the building department to take down any building that has had utilities attached to it. The permit fee for a demolition permit is \$176.40 and it can be issued across the counter. There will be one inspection when the building is gone and the site cleaned up. The inspection is to make sure all has been cleared and there is not any hazards left, such as wires and things. If the demolition is for a house and there is an existing septic system that will no longer be in use there is also a Tank Abandonment permit needed from the Environmental Soils division also in our department. This is also a permit that can be issued across the counter. The fee for this permit is \$160.00

Hope this answers all your questions.

Judy
 541-385-1713

From: Cynthia Smidt
Sent: Monday, February 07, 2011 8:49 AM
To: Lori Furlong; Marti Mello; Judy Hackett; Lisa Petersen
Subject: FW: 2 questions re DEMOs

Could I get a tech to answer this inquiry? Thanks.

From: William Kuhn [mailto:william@riskfactor.com]
Sent: Sunday, February 06, 2011 6:03 PM
To: Cynthia Smidt
Subject: 2 questions re DEMOs

Hi Cynthia,

Thank you for helping to obtain the answer to the date of the change in address for the Lowther parcel.

Regarding "DEMO"s:
 So if someone wants to deconstruct their home a land use permit is required?

What the cost is for a "DEMO" since the value is listed as zero?

Examples are:

B69924 10/18/2010 '181124C004900 19360 INDIAN SUMMER RD,BEND
 DURFEE,JAMES OWNER 0 DEMO MAHO DESCHUTES RIVER WOODS
 B70109 1/21/2011 '1611190000400 65556 KOHFIELD RD,BEND LAVONDA J LOWTHER
 LIVING TRUST SHORTYS INC 0 DEMO 0
 B70143 2/3/2011 '171215DD01400 21131 BEE TREE LN,BEND STEVENS,SCOTT X

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1

20110207 email DEMO fee \$176.40.pdf

OWNER 0 DEMO BEE TREE SUBDIVISION

Thank you,

Bill

William Kuhn

INVEST/O - Registered Investment Advisors

PO Box 5996

Bend, OR 97708-5996

541 389 3676

William@RiskFactor.com

"First, they ignore you, Then they laugh at you. Then they fight you. Then you win." Mahatma Gandhi

MD-150093D Ex# 9 Pg#

2

Kuhn
VS
Deschutes County Assessor Scot Langton

MD-150093D Ex# 10 Pgs# 8

2 - 3 November 2015

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20000403_Tumalo Real Estate 2 kwj_Value Of Our Property

TUMALO REAL ESTATE, INC.
64619 W Hwy 20
Bend OR 97701
(541) 382-0288

MD-150093D Ex# 10 Pg# 1095

April 3, 2000.

Mr. William Kuhn
P.O.Box 5996
Bend OR 97708-5996

Re: 65575 Sisemore Road, Bend

Dear Mr. Kuhn,

As per our telephone conversation this morning, I am happy to provide you with my opinion concerning your property at 65575 Sisemore Road and it's common area & PUD status. I understand from our conversation that there is no written or recorded document which provides for the manner in which issues that effect your property and it's common area with the neighbor at 65595 Sisemore Road.

I have been in the real estate brokerage business for 28 years and have specialized in acreage properties in the Tumalo area for the past 8 years. I am not an appraiser and therefore I cannot speak to the actual value or in this case loss of value due to the lack of written provisions for your PUD. However, my experience with buyer's, especially in recent years is that they are far more cognitive that ever. Most buyer's would make it a condition of purchase that shared maintenance issues and clarification of use be in writing and recorded before they would purchase such a property. There is no doubt in my mind that the lack of such a document would deter most buyers from buying. Should a buyer be willing to bear the risks involved in such a situation, they would certainly expect a significant price reduction on the property.

Further, a seller, and/or a seller's agent, has a duty to disclose to a buyer any material defect to the property known to them. In this case, my opinion is, that the lack of an agreement is a material fact effecting the value of the property and therefore would require disclosure of same to prospective buyers.

I suggest you contact a real estate attorney for legal counsel in this matter.

If you need any further information.

Sincerely,



Barbara L. Nicholson, Broker

20000403_Tumalo Real Estate 2 kwj_Value Of Our Property

MD-150093D Ex# 10 Pg# 1



Northwest Division

20110202 Skyline Financial Trina OBill.pdf

February 2, 2011

William Kuhn
PO Box 5996
Bend, OR 97708-5996

Dear William,

I am responding to your inquiry about the feasibility of financing your home with the current *Home Owners Association* issues that you have been dealing with for years. After reviewing the paperwork you provided to me, it is clear to me that I would not be able to finance your home (or any other one with the same issues you are dealing with).

Sincerely,

A handwritten signature in black ink that reads 'Trina O'Bill'.

Trina O'Bill
Mortgage Loan Officer
1180 SE Division St, #1, Bend, OR 97702
541.788.3005 Mobile
541.306.3700 Office/ 541.306.6641 Fax
Trena@Trena4loans.com
<http://northwest.skylinefinancialcorp.com/trenaobill> 
Individual NMLS # 130701; ML #2797; Corporate NMLS #313768

MD-150093D Ex# 10 Pg# 2

20000403_Tumalo Real Estate 2 kwj_Value Of Our Property OCR.pdf

1180 S.E. Division Street, Suite 1, Bend, OR 97702 | Phone (541) 306-3700 | Fax (541) 306-6641
www.SkylineFinancialCorp.com
Corp NMLS # 313768 | ML # 2797 | DOC # 413-0296





20110205 from Rockland Dunn US Bank.pdf

February 5, 2011

William & Martha Kuhn
PO Box 5996
Bend, OR 97708

RE: Potential Financing of Sisemore Rd. Property

Dear William & Martha:

Thank you for contacting me regarding the potential financing of your home located at 65575 Sisemore Rd., Bend, OR 97701.

Unfortunately, without the legal ability to obtain a building permit at this time, US Bank would be unwilling to extend credit in the form of a mortgage with this particular home as collateral. US Bank is not willing to take the risk of lending against a property that cannot be re-built or properly maintained. The most obvious concern, but not limited to, would be if the home were damaged in any way, with no legal ability to replace the existing structure, the bank would be at risk of an insufficient asset to cover the outstanding liability.

I am sorry that we are unable to help you at this time but if you have any questions or would like additional information please do not hesitate to contact me.

Sincerely,

Rockland Dunn

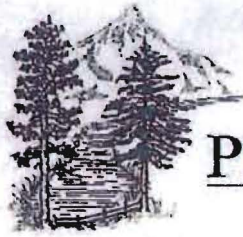
Rockland Dunn
Mortgage Sales Manager

86 SW Century Drive
Bend, OR 97702
(541) 633-1205
Rockland.Dunn@USBank.com

20110205 from Rockland Dunn US Bank.pdf

MD-150093D Ex# 10 Pg# 3

PONDEROSA



PROPERTIES, LLC

20110214 Rad Dyer Ponderosa Properties.pdf

February 14, 2011

William and Martha Kuhn
PO Box 5996
Bend, OR 97702

Dear Bill and Leigh:

Thank you for asking me to come by to view and evaluate your property located at 65575 Sisemore Road, Bend, OR 97701 relating to the possible market value and potential sale in the current market.

Prior to meeting with you, I reviewed the public data available online from Deschutes County in DIAL and LAVA. This research brought to my attention some deficiencies in the subject property and your neighboring property that have a severe adverse impact on value and potential sale. These issues pertain to a Deschutes County decision to not issue building permits based on the lack of a written Homeowners Association Agreement with your neighboring property. Another issue relates to whether or not the recorded partition and conditional use application was completed properly.

In discussing these issues while visiting your home you agreed that they were correct and that they remained unresolved at this time. You also indicated that the Dowells who own the neighboring property have been uncooperative in resolving these issues even while under a court order to do so.

These issues have a tremendous negative impact on the market value of your property and also make it nearly impossible to sell your property until they are resolved. Based on the current status and circumstances relating to your property I can neither provide you a market value estimate or consider listing the property for sale until this is cleared up in a satisfactory manner. You have a beautiful home and setting and I regret not being able to help you more at this time.

If I can be of further assistance or if you have any questions please feel free to contact me.

Best regards,

Rad Dyer, ABR, ABRM, ALC, CCIM, CRB, CRS, e-PRO, GREEN, GRI, RSPS, SFR, SRES
Principal Broker

RAD0001/11

20110214 Rad Dyer Ponderosa Properties.pdf

MD-150093D Ex# 10 Pg# 4

August 10, 2012

To the Board of County Commissioners
Deschutes County Service Center
1300 NW Wall Street, 2nd Floor
Bend, Oregon 97701

Dear Deschutes County Commission,

William and Leigh Kuhn have asked me for my observations on how the county has dealt with the Kuhn's property situation over time from my perspective as a real estate agent and friend.

I'm quite familiar with the property they bought in 1987, both before they purchased and afterword. I've hiked and ridden my horse over that entire area since 1970. I know what the original intent was for that land. I was a member of the original group discussing what became the Tumalo Winter Deer Range study area.

The Bartons (John Barton sold William and Leigh their parcel) had a vision and worked with ODF&W to reduce the human impact on the wildlife habitat. The Kuhns were aware of this history when they purchased. They honored both the letter and the intent of the Winter Deer Range in all stages of their building and land use process.

The difficulties began when Jeff and Pat Dowell purchased into the cluster.

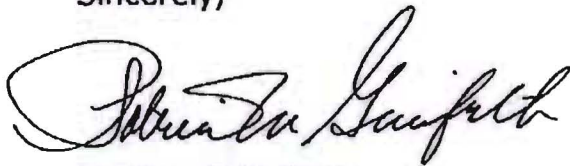
I sat through and spoke at several hearings and witnessed the contortions the county made on behalf of the Dowells. What the Kuhns have gone through to preserve and protect their deed restrictions, the county ordinances, the state statutes in Senate Bill 100, and the wildlife use of their land, was demeaning, unbalanced, and overreaching.

The cost to the Kuhns in real dollars, their time, their health and well-being has been unconscionable.

The issue for the county to address is that the enforceability of building lines on plat maps appears to be jeopardized by the ruling of the Board of County Commissioners reversal of the decision of a Hearings Officer's ruling (A-07-9 and A-09-4) on the Dowell building line.

The County's decisions appear to be punishing the Kuhns, unreasonable, slanted, and dishonoring of the intent for wildlife corridor preservation.

Sincerely,



Patricia Gainsforth

cc: William & Leigh Kuhn

February 4, 2014

To William and Leigh Kuhn
PO Box 5996
Bend, Oregon 97708-5996

Regarding the fair market value of your property

Dear William and Leigh,

I find it difficult to identify a fair market value for your property in its present status with the ongoing actions regarding the CC&Rs and the missing homeowners' agreement.

I read the planning department information, reviewed court documents, consulted with my title company, and relied upon my own experience to address the present and fair market value of your property.

You're in a unique situation in that when you purchased the property you live on, it came with certain covenants that are unenforceable. At this moment the lack of enforceability has these properties out of compliance with the original intent. Deschutes County has not supported you in your efforts to enforce the few restrictions that were available to you when you purchased your property.

As a member of the original community group that initiated the Tumalo Winter Deer Range concept, I am disappointed that the 1979 land use plan did not address the deer range protections adequately. At the moment there is only complaint driven enforcement of wildlife protections and most protection is being done by landowners.

At the moment I don't feel I can give you a true market value on your property as technically your property is unsalable until there is an agreement that is signed and recorded.

I consider your property valueless until you are able to unscramble the present impasse.

In the meantime you can not assure a purchaser of "quiet enjoyment" and unclouded title; therefore a real estate broker would have fiduciary issues around representing your property to other brokers and potential purchasers.

Right now you have a place to be warm, and you have a view, but you also have neighbor issues. What that is worth to you is different than what can be represented by realtors, and title companies to potential purchasers.

Sincerely,



Patricia M. Gainsforth
Bachelor Reality
65260 Tweed Road
Bend, Oregon 97701

541 389 5516

The Kuhns are willing to pay taxes for a place to be warm. Our taxes must reflect the lack of quiet enjoyment and clouded title based on the governmental restrictions.

Kuhn
vs
Deschutes County Assessor Scot Langton
MD-150093D Ex# 11 - 20 ~Pgs# 29

2 - 3 November 2015

11

Thru

20

ORS 40.190 Rule 408 Compromise and offers to compromise
<http://www.oregonlaws.org/ors/40.190>

§ 40.190¹

Rule 408. Compromise and offers to compromise

(1)(a) Evidence of furnishing or offering or promising to furnish, or accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount.

(b) Evidence of conduct or statements made in compromise negotiations is likewise not admissible.

(2)(a) Subsection (1) of this section does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations.

(b) Subsection (1) of this section also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. [1981 c.892 §28]

Ex 11a Pg 1

Chapter 92

1979 REPLACEMENT PART

Subdivisions and Partitions

APPROVAL OF PLAN; PLATS

- 92.010 Definitions for ORS 92.025 to 92.160
- 92.012 Compliance with ORS 92.010 to 92.160 required
- 92.014 Approval of planning commission or governing body of city or county required before creating street or road to partition land
- 92.016 When sales of lots prohibited until approval obtained; exception
- 92.025 Prohibition of sales of lots prior to recording of plat
- 92.040 Application to planning commission or governing body of city or county for approval of subdivision plan or map before recording
- 92.042 Governing body having jurisdiction to approve plans, maps or plats
- 92.044 Adoption of standards and procedures governing approval of plats and of partitioning of land
- 92.046 Adoption of regulations requiring approval of partitioning of land not otherwise subject to approval
- 92.048 Procedure for adoption of regulations under ORS 92.044 and 92.046
- 92.050 Requirements of survey and plat of subdivision
- 92.060 Marking certain points of plats with monuments; specifications of monuments
- 92.065 Marking interior monuments after recording of plat; bond or cash deposit required; release of bond; return of cash deposit; payment for survey work; county surveyor performing survey work
- 92.070 Surveyor's affidavit necessary to record plat; contents of affidavit; notice of monument markings; filing of plat
- 92.080 Preparation of plat
- 92.090 Requisites for approval of tentative plan or plat
- 92.095 Payment of taxes required before plat recorded
- 92.097 Employment of private licensed engineer by private developer; government standards and fees
- 92.100 Approval of plat by city engineer or surveyor or by county surveyor; approval by county assessor and county governing body; fees
- 92.110 Land in special districts; approval of plat; appeal from refusal of district to approve or act
- 92.120 Filing and recording plats; copies
- 92.130 Additional tracings transferred to county surveyor; replacing lost or destroyed records
- 92.140 Indexing of plat records
- 92.150 Construction of donations marked on plat
- 92.160 Notice to Real Estate Commissioner of receipt of plat

UNDEVELOPED SUBDIVISIONS

- 92.205 Policy
- 92.215 Review authorized; manner
- 92.225 Determining whether subdivision subject to review and need for revision or vacation; determining need for revision or vacation of undeveloped subdivision; hearings; notice to landowners
- 92.234 Revision, vacation of undeveloped subdivisions; replatting, approval of replats; vacation proceedings; initiation by affected landowner of vacation proceedings, effect
- 92.245 Fees for review proceedings resulting in modification or vacation

MISCELLANEOUS PROVISIONS

- 92.285 Retroactive ordinances prohibited

OREGON SUBDIVISION CONTROL LAW
(Generally)

- 92.305 Definitions for ORS 92.305 to 92.495
- 92.313 Policy; construction; citation
- 92.317 Policy; protection of consumers
- 92.325 Application of ORS 92.305 to 92.495
- 92.337 Exemption procedures; form; verification; provisions to satisfy liens and encumbrances; withdrawal of exemption; filing fee
- 92.339 Use of fees

(Filing Requirements)

- 92.345 Notice of intention; content; fee
- 92.355 Commissioner may request further information; content
- 92.365 Filing information to be kept current; fee for notice of material change
- 92.375 Consent to service of process on commissioner

(Examination of Subdivision; Public Report)

- 92.385 Examination of subdivision; public report; waiver of examination in other state
- 92.395 Waiver of examination in this state; notice to subdivider
- 92.405 Sale prohibited where public report not waived; distribution and use of public report
- 92.410 Review of subdivisions for which public report issued; revised public report; compliance with ORS 92.305 to 92.495
- 92.415 Advance of travel expense for examination of subdivision

92.025

PROPERTY RIGHTS AND TRANSACTIONS

regulation adopted under ORS 92.044 or 92.046, respectively, prior to the approval of the tentative plan for the major or minor partition; but no person may sell any parcel in a major partition or in a minor partition for which approval of a tentative plan is required by any ordinance or regulation adopted under ORS 92.044 or 92.046, respectively, prior to such approval. [1955 c.756 §24; 1973 c.696 §5; 1974 s.s. c.74 §1; 1977 c.809 §5]

92.020 [Repealed by 1955 c.756 §5 (92.025 enacted in lieu of 92.020 and 92.030)]

92.025 Prohibition of sales of lots prior to recordation of plat. (1) No person shall sell any lot in any subdivision until the plat of the subdivision has been acknowledged and recorded with the recording officer of the county in which the lot is situated.

(2) No person shall sell any lot in any subdivision by reference to or exhibition or other use of a plat of such subdivision before the plat for such subdivision has been so recorded. In negotiating to sell a lot in a subdivision under subsection (1) of ORS 92.016, a person may use the approved tentative plan for such subdivision. [1955 c.756 §6 (enacted in lieu of 92.020 and 92.030); 1973 c.696 §6; 1977 c.809 §6]

92.030 [Repealed by 1955 c.756 §5 (92.025 enacted in lieu of 92.020 and 92.030)]

92.040 Application to planning commission or governing body of city or county for approval of subdivision plan or map before recording. Before a plat of any subdivision or the map of any major partition may be made and recorded, the person proposing the subdivision or the major partition or his authorized agent or representative shall make an application in writing to the county or city having jurisdiction under ORS 92.042 for approval of the proposed subdivision or the proposed major partition in accordance with procedures established by the applicable ordinance or regulation adopted under ORS 92.044. Each such application shall be accompanied by a tentative plan showing the general design of the proposed subdivision or the proposed major partition. No plat for any proposed subdivision and no map for any proposed major partition may be considered for approval by a city or county until the tentative plan for the proposed subdivision or the proposed major partition has been approved by the city or county. Approval of the tentative plan shall not constitute final acceptance of the plat of the proposed subdivision or

the map of the proposed major partition for recording; however, approval by a city or county of such tentative plan shall be binding upon the city or county for the purposes of the preparation of the plat or map and the city or county may require only such changes in the plat or the map as are necessary for compliance with the terms of its approval of the tentative plan for the proposed subdivision or the proposed major partition. [Amended by 1955 c.756 §7; 1973 c.696 §7]

92.042 Governing body having jurisdiction to approve plans, maps or plats. (1) Land within six miles outside of the corporate limits of a city is under the jurisdiction of the city for the purpose of giving approval of plans, maps and plats of subdivisions and major partitions under ORS 92.040 and 227.110. However, when the governing body of a county has adopted ordinances or regulations for subdivision and major partition control as required by ORS 92.044, land in such county within such six-mile limit shall be under the jurisdiction of the county for such purposes.

(2) Land over six miles from the corporate limits of a city is under the jurisdiction of the county for the purpose of giving approval of plans, maps and plats for subdivisions and major partitions under ORS 92.040. [1955 c.756 §4; 1973 c.261 §1; 1973 c.696 §8]

92.044 Adoption of standards and procedures governing approval of plats and of partitioning of land. (1) The governing body of a county or a city shall, by regulation or ordinance, adopt standards and procedures, in addition to those otherwise provided by law, governing, in the area over which the county or the city has jurisdiction under ORS 92.042, the submission and approval of tentative plans and plats of subdivisions and governing the submission and approval of tentative plans and maps of major partitions.

(a) Such standards may include, taking into consideration the location and surrounding area of the proposed subdivisions or the proposed major partitions, requirements for:

(A) Placement of utilities, for the width and location of streets or for minimum lot sizes and such other requirements as the governing body considers necessary for lessening congestion in the streets;

(B) For securing safety from fire, flood, slides, pollution or other dangers;

12 ORS 105.820 Remedy of tenants in common 1pg

MD-150093D Ex# 12 Pg# 1

OregonLaws.org

Home > 2013 ORS > Vol. 3 > Chapter 105 > Miscellaneous Actions

105.805
Action for waste

105.810
Treble damages
for injury to or
removal of
produce, trees or
shrubs

105.815
When double
damages are
awarded for
trespass

105.820
Remedy of tenants
in common

§ 105.820¹

Remedy of tenants in common

A tenant in common may maintain any proper action, suit or proceeding against a cotenant for receiving more than the just proportion of the rents or profits of the estate owned by them in common.

12 ORS 105.820 Remedy of tenants in common 1pg

MD-150093D Ex# 12 Pg# 1

ORS 308.205 Real Market Value Defined

<http://www.oregonlaws.org/ors/308.205>

§ 308.205¹

Real market value defined

- rules

(1) Real market value of all property, real and personal, means the amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller, each acting without compulsion in an arms-length transaction occurring as of the assessment date for the tax year.

(2) Real market value in all cases shall be determined by methods and procedures in accordance with rules adopted by the Department of Revenue and in accordance with the following:

(a) The amount a typical seller would accept or the amount a typical buyer would offer that could reasonably be expected by a seller of property.

(b) An amount in cash shall be considered the equivalent of a financing method that is typical for a property.

(c) If the property has no immediate market value, its real market value is the amount of money that would justly compensate the owner for loss of the property.

(d) If the property is subject to governmental restriction as to use on the assessment date under applicable law or regulation, real market value shall not be based upon sales that reflect for the property a value that the property would have if the use of the property were not subject to the restriction unless adjustments in value are made reflecting the effect of the restrictions.

[Amended by 1953 c.701 §2; 1955 c.691 §§1, 2; 1977 c.423 §2; 1981 c.804 §34; 1989 c.796 §30; 1991 c.459 §88; 1993 c.19 §6; 1997 c.541 §152]

Industrial Property Valuation for Tax Purposes

(1) For the purposes of this rule, the following words and phrases have the following meaning:

(a) A "unit of property" is the item, structure, plant, or integrated complex as it physically exists on the assessment date.

(b) "Real property" means the real estate (physical land and appurtenances including structures, and machinery and equipment erected upon the land or attached to the land or structures) and all interests, benefits, and rights inherent in the ownership of the physical real estate.

(c) "Highest and best use" means the reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, and financially feasible, and that results in the highest value. See The Appraisal of Real Estate, 12th edition (2001).

(2) If the highest and best use of the unit of property is an operating plant or an operating integrated complex, the real market value will be considered to be a "going concern." The going concern concept recognizes that the value of an assembled and operational group of assets usually exceeds the value of an identical group of assets that are separate or not operational.

(3) Methods and Procedures for Determining the Real Market Value of Industrial Property:

(a) For the valuation of industrial property all three approaches sales comparison, cost, and income, must be considered. For a particular property, it may be that all three approaches can not be applied, however, each must be investigated for its merit in each specific appraisal.

(b) The market value of a unit of property must not be determined from the market price of its component parts, such as wood, glass, concrete, furnaces, elevators, machines, conveyors, etc., each price separately as an item of property, without regard to its being integrated into the total unit.

(c) In utilizing the sales comparison approach only actual market transactions of property comparable to the subject, or adjusted to be comparable, will be used. All transactions utilized in the sales comparison approach must be verified to ensure they reflect arms-length transactions. When non-typical market conditions of sale are involved in a transaction (duress, death, foreclosure, bankruptcy, liquidation, interrelated corporations or persons, etc.) the transaction will not be used in the sales comparison approach unless market-based adjustments can be made for the non-typical market condition.

(d) Properties utilized in the sales comparison approach, although not necessarily identical, at the very least must be similar in many respects. Adjustments must be made for differences in location, product, production capacity, and all other factors that may affect value. Excessively large adjustments or an excessive number of adjustments is an indication that the properties are not comparable.

(e) When utilizing the sales comparison approach, the appraiser must take into consideration difference between the subject and the comparable properties for physical condition, functional obsolescence and economic obsolescence. Adjustments must be made for differences between the subject and comparable properties for factors such as physical condition, functional deficiencies, operating efficiency, and economic obsolescence. If the properties are functionally or economically equivalent, verification of the equivalency must be included in the appraisal.

(f) Sales for the disposal of properties through auction, liquidation or scrap sales are indicators of market value only when on the assessment date such disposal of the subject property is imminent, or has actually taken place.

(g) The cost approach may utilize either the reproduction, replacement, or the used equipment technique. It is acceptable to use trended historical cost to estimate the reproduction cost new. The value estimate must include all costs required to assemble and construct the unit of property.

(h) When using the income approach, the income from the operation of the property may be utilized for industrial properties and other properties that are not typically leased or rented. When the income from the property's operation is used, the unit of property must be valued as a going concern. In utilizing the income

approach for the valuation of industrial properties, the discounted cash flow technique is one of the appropriate methods to derive a value estimate. Consideration in the discounted cash flow technique is given to items such as the anticipated free cash flow available to the debt and equity holders, inventory valuation methods, intangible assets, income taxes, net working capital, capital reinvestment, etc. When utilizing the discounted cash flow technique, the capitalization or discount rate must be derived in accordance with OAR 150-308.205-(C).

(i) Determining the highest and best use for the unit of property is necessary for establishing real market value. This determination of highest and best use may include, among others, all possible uses that might result from retaining, altering or ceasing the integrated nature of the unit of property.

(4) Basic information for an appraisal. Basic data and procedures in making appraisals normally include the following when applicable:

- (a) Location of property by tax codes and tax lot numbers;
- (b) Map or sketch of land owned and layout of plant;
- (c) Inventory of physical plant;
- (d) Reproduction or replacement cost computations, as applicable;
- (e) Analysis of depreciation;
- (f) Analysis of economics as they affect valuation;
- (g) Analysis of sales data, when applicable;
- (h) Field inspection;
- (i) Research and familiarization with typical properties of the industry;
- (j) Annual reports to stockholders;

(k) Fixed assets schedules;

(l) Income statements;

(m) Such other data that may affect value.

(5) Basic information for an appraisal utilizing the annual report method. Basic data for an appraisal utilizing the annual report method normally includes the following:

(a) Report of additions;

(b) Report of retirements;

(c) Knowledge of miscellaneous technical and economic conditions that affect value;

(d) Trending factors:

(A) Separate factors for yard improvements, buildings, and equipment classified as real property must be developed.

(B) The development of the factors must use data published by the United States Department of Labor, the Oregon Building Construction Trades Council, and other sources the Department of Revenue deems to be reliable indicators of property value over time.

(C) Data developed by physical inspection together with appraising a segment of the total property or making a general review of the total value under certain circumstances may supplement the data utilized in (A) above.

(e) Depreciation allowances;

(f) Real market value for prior year.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.205

Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

Search Results when searching for **ORS 308.205(d)**

250 document(s) found.

	Case Title	Case Number	Date Filed
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71%	RICHARD L. RODE and LINDA P. RODE v.	040238F	10/29/2004

C. E. "Win" Francis

Gerald A. Martin

FRANCIS & MARTIN, LLP

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COPY

December 12, 2001

MD-150093D Ex# 13 Pg# 238

HAND-DELIVERED

Liz Fancher
25 NW Minnesota Avenue
Bend, OR 97701

Re: Kuhn v. Dowell
Deschutes County Circuit Court Case No. 01-CV-0233-MA
Our File No. 01-037

Dear Liz:

The purpose of this letter is to disclose a meeting, which I attended on August 9, 2000 with my clients Bill and Leigh Kuhn. They scheduled a meeting with Commissioner Dennis Luke and asked that I attend.

We arrived at the County offices and after waiting a few minutes Commissioner Luke appeared accompanied by George Read. At that time, either George Read or Dennis Luke made the comment that they were not aware the Kuhns' attorney was going to be accompanying them. We proceeded to a conference room and George Read produced a diagram showing the Dowells' property and the Kuhns' property. The primary issue at that time was whether the Dowells' structure on their property was in violation of the 400-foot maximum setback from Sisemore Road.

The diagram had a line on it from the side or corner of the Dowell home across the side of their property diagonally to Sisemore Road showing that by measuring in such a manner the structure was within the 400-foot setback. The Kuhns questioned why that measure was appropriate rather than measuring from the structure to the front of the Dowells' property where it abutted Sisemore Road. George Read stated that was a proper way to measure the 400-foot maximum setback and Commissioner Luke nodded his head affirming that statement.

At the time of that meeting I had had little or no prior contact with Commissioner Luke or George Read. I was surprised by what seemed to be an adversarial or confrontational approach taken by both Commissioner Luke and George Read. I had anticipated a meeting with some exchange and discussion regarding the appropriate measurement for the 400-foot maximum

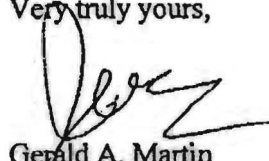
MD-150093D Ex# 13 Pg# 1

Liz Fancher
December 12, 2001
Page Two

setback. Instead the meeting was quite short with George Read simply indicating that this is the way we measure it and Dennis Luke concurring. That meeting was the first occasion when anyone had suggested the diagonal measurement to Sisemore Road. The documents submitted to the County by the Dowells when they were seeking approval for the structure on their property showed the usual measurements from Sisemore Road at the front of their lot straight back and parallel with the sides of their lot.

If I can offer you any further information, please contact me.

Very truly yours,



Gerald A. Martin

GAM/grw

cc: William and Leigh Kuhn

LIZ FANCHER, ATTORNEY

20011205_Fancher To Craghead re 14th Amendment 2pgs.pdf

MD-150093D Ex# 14 Pg# 2 pgs

December 5, 2001

01 12 06

COPY

LAURIE CRAGHEAD
DESCHUTES COUNTY
OFFICE OF LEGAL COUNSEL
ADMINISTRATION BUILDING
1130 NW HARRIMAN AVENUE
BEND, OREGON 97701

Re: DR-01-5 (A-01-19), Jeffrey and Pat Dowell, Appeal of Declaratory Ruling

I am writing to seek your assistance in preparing for next week's, December 12, 2001 hearing on the Dowell appeal. At the beginning of the hearing the Board of Commissioners will disclose any *ex parte* contacts, bias, prejudgment or personal interest. I believe it is likely that one or more of the Commissioners may make disclosures regarding these issues. I am writing to let you know of potential issues that may merit disclosure or disqualification so that you and the Board will have time to consider the issues prior to the hearing.

All Board members may be affected by the fact that the County has potential legal liability for granting building permits for the Dowell property, if Ms. Green's decision is affirmed. The County has issued permits for development on the Dowell property that do not comply with the F2 zone's 100' yard setback. Additionally, the County has either permitted or condoned the construction of the Dowell's house behind the 400' building line shown on the final plat of the partition that created the Dowell's lot. The actions could be the basis of a legal claim against the County. This fact may impact the ability of the Board to act as an impartial decision maker in this case. This is one of the reasons my clients asked that the Board not hear the appeal in the October 15, 2001 letter the Board refused to consider when it granted discretionary review.

Commissioner Luke has taken a position regarding setback requirements for this property. He has told the Kuhns that the side yard is a building area because it is in front of the 400' building line required for the property by the partition and PUD approval. Commissioner Luke measured this area across the side, rather than front yard of the Dowell property to create a building line that does not match the building line established on the final plat of the partition.

Chair DeWolf, at the October 29, 2001 Commission meeting asked "[c]an't we just set a setback of 25 feet and save everybody a bunch of time and money?" This comment indicates that Chair DeWolf may have already decided to reverse Ms. Green's decision.

MD-150093D Ex# 14 Pg# 1

December 5, 2001

Request for Information

To assist me in determining whether I should be concerned about the above issues, I would ask that you provide me with copies of any of the following materials prior to December 12, 2001:

1. Copies of any tort claims notices, complaints or correspondence filed with Deschutes County by the Dowells, their agents or attorneys or others arising out of Deschutes County's permit decisions regarding the Dowells' property that is the subject property in the above-referenced appeal.
2. Copies of any letters, memoranda, notes or other written documents, other than documents prepared by William or Leigh Kuhn, that contain any claim or claims that allege or infer that the County or County employees or officials were in error in issuing permits for development on the Dowell's property.
3. Copies of any documents prepared by or for consideration by any County Board, Legal Department, or Planning Division employee or official that are of record at Deschutes County that refer to William or Leigh Kuhn or to Jeffrey or Pat Dowell, excluding permit records that are available for public inspection through the Building or Planning Division of the Community Development Department.

Record of Appeal

It remains my position, as stated in my letter of October 15, 2001, that the Board should have declined to hear the Dowells' appeal. I am enclosing a copy of the October 15, 2001 letter and ask that it be included in the record of the appeal at this time. I believe that the County Board should have considered the letter at its October 29, 2001 work session despite the provisions of DCC 22.32.035(D). I believe that code provision is unenforceable as it grants the appellant, but not other parties, a voice in the determination of whether to hear an appeal. This denies my clients due process of law, a right protected by the 14th Amendment of the US Constitution. County code provisions that are unconstitutional are not enforceable and should not have been applied. The decision whether to hear the appeal and the scope of review are matters that directly affect my client's legal position in this matter.

Please include this letter and my October 15, 2001 letter in the record of DR-01-5/A-01-19.

Sincerely,



Liz Fancher

Enc.

Cc:

client ✓
file

MD-150093D Ex# 14 Pg# 2



MAGISTRATE DIVISION

OREGON TAX COURT MD-150093D Ex# 15 Pg# 13 Pgs

Presiding Magistrate: Jill A. Tanner

Magistrates:

Jeffrey S. Mattson
Daniel K. Robinson
Scot A. Sideras
Coyreen R. Weidner

March 23, 2006

William John Kuhn
Martha Leigh Kuhn
PO Box 5996
Bend OR 97708

Laurie E Craghead
1300 NW Wall Street #200
Bend OR 97701-1960

Re: William John Kuhn and Martha Leigh Kuhn v. Deschutes County Assessor
TC-MD 050021C (Control); 050248C

Dear Parties:

Enclosed is a copy of the Decision signed by Magistrate Dan Robinson on March 23, 2006. The Decision was filed and entered on March 23, 2006.

Enclosure

MD-150093D Ex# 15 Pg# 1

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

FILED
MAGISTRATE DIVISION
OREGON TAX COURT

06 MAR 23 AM 7:02

WILLIAM JOHN KUHN
and MARTHA LEIGH KUHN

Plaintiffs,

v.

DESCHUTES COUNTY ASSESSOR,

Defendant.

TC-MD 050021C (Control)
050248C

ENTERED

MAR 23 2006

DECISION

MAGISTRATE DIV.

Plaintiffs have appealed the real market value (RMV) of their property for tax years 2002-03, 2003-04, and 2004-05. There are two accounts at issue: 163467 (tax lot 200), and 131396 (tax lot 300).¹ The value of both tax lots is properly before the court for the 2004-05 tax year, because Plaintiffs timely appealed from an order of the county board of property tax appeals (BOPTA). Only tax lot 200 is before the court for the two prior tax years (2002-03 and 2003-04), based on the court's earlier Order finding an alleged error in value of at least 20 percent, as provided in ORS 305.288(1)(b).² That Order is incorporated by reference into this Decision.

///

¹ The county map numbers are 16111900-00-200 and 16111900-00-300, respectively, for tax lots 200 and 300.

² Unless noted otherwise, all references to Oregon Revised Statutes (ORS) are to 2001.

Plaintiffs properly and timely appealed both accounts (the improved parcel and the unimproved, jointly-owned parcel, tax lots 200 and 300) for the 2004-05 tax year from an order of the county board. That appeal was assigned case number TC-MD 050248C. Several months earlier, Plaintiffs appealed the value of both accounts back to tax year 1987-88, under case number TC-MD 050021C. The court issued an Order April 20, 2005, allowing the appeal of the residential account (tax lot 200) to be heard for tax years 2002-03, 2003-04, and 2004-05, with relief, however, contingent upon a finding by the court of an error in value of at least 20 percent, as required by ORS 305.288(1)(b). The appeal of the other account (tax lot 300) was dismissed because the 20-percent error rule does not apply to undeveloped land, and Plaintiffs did not establish "good and sufficient cause," as provided in ORS 305.288(3), (5).

Plaintiffs appeared and testified on their own behalf at trial. Defendant was represented by Laurie Craghead, Assistant County Counsel, Deschutes County. Testifying for Defendant were Theresa Maul, Chief Appraiser, Deschutes County Assessor's Office, and Tom Anderson, Director of Deschutes County Community Development Department.

I. STATEMENT OF FACTS

The following facts are either agreed to by the parties or found by the court. In 1980, Plaintiffs' predecessor in interest, John Barton (Barton), received approval for a conditional use (CU-80-22) to allow a "cluster development" for three lots on an approximately 43 acre parcel in the Tumalo Winter Deer Range. (Def's Ex I at 2-3.) The zoning at the time of the 1980 conditional use approval was Forest Use F-3. The current zoning is F-2, with Landscape Management and Wildlife Area Combining Zone overlays.³ Ordinarily, the minimum lot size in the Tumalo Winter Deer Range was 40 acres. (Def's Ex I at 2; Ptf's Ex 15 at 126.⁴)

A "cluster development" is a conditional use that allows developments with smaller minimum lot sizes than is otherwise allowed under applicable zoning laws.⁵ Commensurate with that conditional use application, Barton amended a previously filed partition application proposing two 4.3 acre parcels and an approximately 34.4 acre parcel designated as a "common

³ The minimum parcel size for a single-family residential dwelling not used in conjunction with forest or farm use on land zoned FU-2 was 40 acres per PL-15, section 4.080 (6) (A), and 20 acres for FU-3 zoned land pursuant to section 4.085(6)(A). (Ptf's Ex 15 at 93, 98.)

⁴ The court's numbering of Plaintiffs' Ex 15 is based on the page numbering appearing at the top of the exhibit, which is the method used by the parties at trial. That numbering system does not correspond to the actual page count because the exhibit, marked by volume and page, begins with page 42 (i.e., Vol 33 Page 42).

⁵ A county hearing officer's decision on Plaintiffs' neighbors' 2001 application for a declaratory ruling to establish minimum side yard setbacks for their property includes a discussion of the procedural history of the original owner's efforts to divide the property to create the two homesites Plaintiffs and their neighbors now occupy. That decision indicates that the properties are in a Wildlife Area (WA), which requires a 40-acre minimum lot size. It further states "PL-15 also allowed as a conditional use cluster developments within which smaller minimum lot sizes could be approved." (Def's Ex R at 2.) PL-15, section 1.030(21) defined a cluster development as "[a] planned development, at least 5 acres in area, permitting the cluster of single-family residences on one part of the property, with no commercial or industrial uses permitted." (Ptf's Ex 15 at 48.)

area." (Def's Ex R at 2.) Barton received preliminary approval for the minor partition, MP-79-232, on May 13, 1980. (Def's Ex J at 1.) The plat map received final approval by the requisite county officials in November 1980. (Ptf's Ex 7 at 12.) The conditional use permit and partition created tax lots 100, 200, and 300. Tax lots 100 and 200 are the 4.3 acre parcels, and tax lot 300 is the 34.4 acre parcel.

Plaintiffs purchased tax lot 200, and a one-half interest in tax lot 300, in July 1987. Plaintiffs' neighbors, Jeff and Pat Dowell, purchased tax lot 100, and the other one-half interest in tax lot 300. On June 19, 1987, the month before Plaintiffs purchased their property, Plaintiffs' application for a lot line adjustment was approved by the Deschutes County Community Development Department. (Def's Ex L.) The following year, on November 14, 1988, Plaintiffs' Landscape Management Plan was approved, with two conditions: the first condition noted a 400 foot maximum setback from Sizemore Road imposed by the minor partition, pursuant to which Plaintiffs were required to move their home slightly to the east; the second condition was that Plaintiffs provide a copy of the homeowners maintenance agreement for the commonly-owned property, as part of their building permit. (Def's Ex M at 1.) The lot line adjustment and landscape management plan paved the way for Plaintiffs to construct their home (presumably subject to the submission and approval of a building permit application). In 1989, Plaintiffs built their home on tax lot 200. The Dowells' home was subsequently built on tax lot 100. The total RMV on tax lot 200 (Plaintiffs' homesite) for tax years 2002-03, 2003-04, and 2004-05 was \$230,590, \$242,830, and \$251,670, respectively. The total RMV of tax lot 300 was \$183,130 for the 2004-05 tax year.

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The Deschutes County land division code applicable to the 1980 conditional use and partition approvals was PL-14. The applicable zoning ordinance was PL-15.⁶ PL-14, section 5.060, required the Deschutes County Planning Director to record partition plans and maps. The Deschutes County Planning Director did not record the partition map for the subject property until October 2004. Therefore, the partition map was not recorded as of January 1, 2002, January 1, 2003, or January 1, 2004. Defendant further admits in its Answer that "some of the other minor partition plats approved during the time frame listed in Plaintiffs' Complaint regarding the subject property's approval were not recorded."⁷ Plaintiffs believe there are as many as 500 other parcels in the county with unrecorded partition plats.

Plaintiffs contend that their property had no value for the tax years at issue because various county ordinances required the county to record the "plat" map for their property, and that state law prohibits the sale of their lot unless and until the plat is recorded. Plaintiffs further assert that the Dowells' home was built beyond the applicable setback requirements in the plat map (MP-79-232), that the county refuses to enforce those requirements, and that the county's refusal diminishes the value of Plaintiffs' property. Finally, Plaintiffs assert that the lack of a recorded homeowners agreement providing for the shared maintenance of the jointly owned property (tax lot 300) also reduces the value of their property.

Defendant responds that Plaintiffs' property was part of a "plan" creating a "partition" rather than a "plat" creating a "subdivision." Accordingly, the statutory provision prohibiting the sale of a lot in a subdivision until the plat is recorded is inapplicable. Defendant presents three alternative arguments in response to Plaintiffs' position relative to the alleged setback violations.

⁶ The parties submitted only the 1979 versions of the county ordinances (PL-14 and PL-15) referenced in this Decision. The court's resolution of this case obviates the need for more current versions.

⁷ Def's Answer for TC-MD No 050248C at 2.

Finally, Defendant contends that, by their own admission, the deed restrictions Plaintiffs recorded satisfy the requirement of a homeowners agreement. Defendant's bottom line is that Plaintiffs' asserted legal deficiencies are misplaced and that it has comparable sales to support the current tax roll values.

II. ANALYSIS

The court begins its analysis by setting out certain definitions. A "partition" involves the division of land into two or three "parcels." *See* ORS 92.010(7). A "subdivision," on the other hand, is a division of land into four or more "lots." ORS 92.010(15). The requirements surrounding a subdivision are generally more stringent than the requirements for a partition. Plaintiffs' lots were created through the process of a partition.⁸

The court rejects at the outset Plaintiffs' assertion that the provisions of PL-14 and PL-15 transform their partition into a subdivision. The court recognizes that Plaintiffs' property lies loosely within a Wildlife Area Combining Zone (WA), and that section 8.050(16)(B)(b) of PL-15, made applicable through section 4.190(5), provides that "[a]ll subdivision requirements contained in County Ordinance PL-14 shall be met." (*See* Ptf's Ex 15 at 182.) Similarly, section 8.050(16)(C) requires applications for cluster developments to be accompanied by a plan with "[a] plat map meeting all the subdivision requirements of * * * PL-14." (*Id.*) However, the fact that the development was required to meet the county's subdivision requirements does not mean that the partition thereby became a subdivision.⁹ At the same time,

⁸ At the time Barton received approval for the partition, Oregon law distinguished between "major" and "minor" partitions, the former including the creation of a road or street, and the latter not involving roads or streets. *See* ORS 92.010(2) and (4) (1979).

⁹ Subdivision designation is important to Plaintiffs for two reasons. First, PL-14, section 4.110(1) prohibits certain title transfers until the final plat is recorded (*See* Ptf's Ex 14 at 36-37), and section 1.070(46) of that ordinance defines a plat as "[a] final map, diagram, drawing * * * concerning a subdivision." (*Id.* at 9.) (emphasis added). Second, Plaintiffs accept Defendant's assertion that the statutory prohibitions in ORS 92.025 against the sale of property prior to the recording of the plat pertain only to subdivisions.

the court's analysis below eliminates the importance, to Plaintiffs' case, of the subdivision designation.

A. *The Lack of a Recorded Plat*

Plaintiffs' principal argument is that applicable county ordinances required the recording of their plat, that the plat was not recorded when the partition was approved (nor at any time on or before the assessment dates here at issue), and that state law prohibited the sale of their property absent the recording of that plat. Accordingly, Plaintiffs contend that their property had no value on the applicable assessment dates.

PL-14, section 5.060, which clearly pertains to partitions (as opposed subdivisions), provides in relevant part:

"Following approval of the tentative plan for a proposed partitioning, the applicant shall prepare and submit to the Planning Department the *final map or drawing* for the subject partitioning. * * * [T]he original and two (2) copies thereof [shall be] submitted by the Planning Department to the Executive Committee for approval. The original shall be *recorded by the Planning Director* in the office of the County Clerk following approval by the Executive Committee."

(Ptf's' Ex 14 at 41.) (Emphasis added.) Defendant concedes that section 5.060 required "final partition plans and maps * * * to be recorded by the Deschutes County Planning Director after final approval," and that the director "did not record the partition map for the Subject property until October 2004." (Stip Facts 17, 18.) However, Defendant argues that by requiring the recording of "final" maps or drawings after final approval, section 5.060 violates ORS 92.046 (1979), which, according to Defendant, only allowed the county governing body to

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establish recording requirements for “tentative plans” of minor partitions.¹⁰ The court is not persuaded that section 5.060 exceeds the bounds of ORS 92.046, as that statute existed in 1979. However, the court need not resolve that issue, for reasons that become obvious later in this Decision. Moreover, the court will accept, without deciding, that applicable county ordinances required the recording of Plaintiffs’ plat and the plat was not recorded on the assessment dates for the years at issue.

The next question is whether state law prohibited the sale of Plaintiffs’ property prior to the time the partition plat¹¹ was recorded. This is where Plaintiffs’ subdivision argument becomes important, if only to the parties. That characterization (subdivision) appears driven by Plaintiffs’ acceptance of Defendant’s contention that the 1979 version of ORS 92.025(1) governs this case. The statute at that time provided:

“(1) No person shall sell any *lot* in any *subdivision* until the plat of the *subdivision* has been acknowledged and recorded with the recording officer of the county in which the lot is situated.” (Emphasis added.)

Clearly, the law in effect at the time Plaintiffs’ partition was created applied only to subdivisions, prohibiting any sale until the plat was recorded. However, Plaintiffs are concerned with the value of their property in 2002, 2003, and 2004. ORS 92.025(1) was amended in 1989

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¹⁰ ORS 92.046 (1) (1979) authorized the county governing body to adopt regulations or ordinances requiring approval of proposed partitions, and subsection (2) provided:

“Such ordinances or regulations may establish the form and contents of the tentative plans of minor partitions submitted for approval and may establish adequate measures for the central filing, including but not limited to recording with the city recorder or the county recording officer, and for the maintenance of tentative plans for minor partitions following approval.”

¹¹ Throughout the proceeding Defendant emphasized the distinction between a plat and a plan, because the statutory definition of a plat in the 1979 version of ORS 92.010(9) tied a plat to a subdivision. However, by 2001, a plat came to be defined as “a final subdivision plat, replat or *partition plat*[.]” and by statute a “partition plat” concerns a partition. ORS 92.010(9), (8) (emphasis added).

to expand the restriction to parcels in partitions. The italicized language below reflects the 1989 amendment, pursuant to which the statute read:

“(1) No person shall sell any lot in any subdivision *or convey any interest in a parcel in any partition* until the plat of the subdivision *or partition* has been acknowledged and recorded with the recording officer of the county in which the lot is situated.”

Or Laws 1989, ch 722, § 4(1); *see also* ORS 92.025(1)(1989). A minor amendment in 1991 added the words “or parcel” prior to the last two words of the statute as set forth immediately above, so that the plat was required to be “recorded with the recording officer of the county in which the lot *or parcel* is situated.” *See* Or Laws 1991, ch 763, § 6. There have been no further amendments to the statute through 2003. Therefore, as amended, ORS 92.025(1) does in fact prohibit the sale of parcel in a partition until the plat is recorded. That brings the court to the final question relating to the first issue. Assuming ORS 92.025(1) prohibited the sale of Plaintiffs’ property, what was the value of that property?¹² Again, Plaintiffs insist the legal impediments render the property worthless. The court disagrees.

A valuation dispute in the property tax arena is governed by the statutory definition of real market value. ORS 308.205 provides in relevant part as follows:

“(1) Real market value of all property, real and personal, means the amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller, each acting without compulsion in an arm’s length transaction occurring as of the assessment date for the tax year.

¹² The statutory prohibition in ORS 92.025(1) did not necessarily prevent Plaintiffs from selling their property. The property could always be sold by quitclaim deed. Moreover, in *Ogan v. Ellison*, 297 Or 25, 682 P2d 760 (1984), the Oregon Supreme Court concluded that the statutory prohibition in a very similar statute, ORS 92.016(2), which prohibited the sale of a parcel in a partition prior to *approval* of the tentative plan (as opposed to the *recording* of that plan), did not bar the purchaser from enforcing the seller’s promise to convey the property. “The rule that an agreement is illegal and unenforceable if it conflicts with the provisions of a statute is not inexorable and unbending.” *Ogan*, 297 Or at 31, *quoting Uhlmann v. Kin Daw*, 97 Or 681, 689, 193 P 435 (1920). The court may inquire into legislative intent unless “the statute expressly declares that an agreement made in contravention of it is void.” *Id.*, *quoting Uhlmann* at 689-690. The *Ogan* court concluded that the legislative intent behind the statutory scheme within which ORS 92.016 is a part, was “the prevention of undesirable partitioning of land” as opposed to the sale of property. *Id.* at 32. It would appear that the same legislative intent was behind the adoption of ORS 92.025(1), with the focus being on the recording process as opposed to the approval process.

"(2) Real market value in all cases shall be determined by the methods and procedures in accordance with the rules adopted by the Department of Revenue and in accordance with the following:

"(a) The amount a typical seller would accept or the amount a typical buyer would offer that could reasonably be expected by a seller of the property.

* * * * *

"(c) If the property has no immediate market value, its real market value is the amount of money that would justly compensate the owner for loss of the property."

This case raises the question of whether the property has an immediate market value. If not, value would be determined based on the standard of just compensation, per ORS 308.205(2)(c). This is not good news for Plaintiffs because their position essentially asserts that the property had no value by operation of law. Yet, the statutory definition of market value set forth above refutes that assertion, requiring that the property be taxed based on some measure of value.

Plaintiffs assert that they could not morally sell the property because of the legal problems surrounding the unrecorded plat. The statutory prohibition against conveying their parcel until the plat is recorded was enacted two years after they purchased the property, and Plaintiffs, therefore, urge the court to reject any claim that their own purchase demonstrates that the property could be sold notwithstanding the statute. Although that is true, Defendant submitted evidence showing that Brian and Marilyn Sholtis, of Mansfield, Ohio, offered to purchase the Dowells' property in January 2001 for \$220,000. (Def's Ex Q at 1.) The Sholtis's offer was submitted by a Portland attorney. The Dowells' property is the other residential lot (technically termed a parcel) created by the unrecorded partition, and, on the applicable assessment dates, the sale of that parcel was as restricted by the statute (ORS 92.025(1)) as Plaintiffs' property. The Dowells rejected the Sholtis's offer and, therefore, it cannot be used as

evidence of an immediate market for the subject property. And, although there were perhaps hundreds of similarly situated parcels plagued by unrecorded plats, neither party submitted any sales of such parcels. Accordingly, on the evidence before it, the court concludes that Plaintiffs' property had no immediate market value. Plaintiffs' value must therefore be determined under the principle of just compensation. See ORS 308.205(2)(c).

As this court has previously noted, "' just compensation' is a condemnation law test," and, oddly enough, the value sought is "fair market value or 'value in exchange.'" *Truitt Brothers, Inc. v. Department of Revenue*, 10 OTR 111, 114 (1985). The court elaborated by stating that ORS 308.205 "is simply saying that if there is no immediate market, then the value of the property is to be estimated using a method other than the sales comparison approach." *Id.*¹³

The other two methods for valuing property are the income and cost approaches. See OAR 150-308.205-(A)(2)(a) (2001). The income approach is clearly inapplicable because the subject property is residential and generates no income. Accordingly, Plaintiffs' value must be based on the cost approach. Plaintiffs have the statutory burden of proof under ORS 305.427, and they have not submitted any evidence on the cost approach. Accordingly, the values on the roll are sustained.

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¹³ That makes sense because Plaintiffs are required to pay taxes based on the "value" of their property, and the court has no doubt that, if the government took (condemned) their property, Plaintiffs would expect monetary compensation. The law requires that compensation be "just." That no doubt brings some comfort to Defendant who, on a number of occasions, reminded the court that, although Plaintiffs claim they did not have a legal lot of record, the county acted as though the properties were legally established. Plaintiffs were issued a number of approvals and permits before they were allowed to build their home, which they have now lived in for 25 years. Moreover, the Dowells were also issued all the approvals required for the construction of their home, and they, too, have lived there for many years.

B. *Remaining Issues*

The other two points asserted by Plaintiffs concern the alleged setback violations and the nonexistent homeowners agreement. As to the first point, there is insufficient evidence for the court to determine whether the Dowells' home was built beyond the applicable setback requirements in the plat map. Additionally, assuming the home was built beyond the applicable setbacks, Plaintiffs have not provided any market evidence of how that would affect the value of *their* property, as opposed to the Dowells' property.

As to the second point, Defendant responds that Plaintiffs do, in fact, have a recorded homeowners agreement, but that they are simply not satisfied with the parameters of that agreement. In support of that assertion, Defendant points to a letter written by Plaintiffs to the Deschutes County Community Development Department in 1997, in which they state "[t]he deed restrictions of record met your definition of the necessary joint homeowners maintenance agreement. Unfortunately the wording on this accepted document is so vague on certain points of the restrictions * * * that it becomes extremely difficult and expensive for the parties of the agreement to enforce compliance." (Def's Ex O at 1.) The court's response to this issue is the same as its response to the alleged setback violations. Namely, assuming the required homeowners agreement does not exist, Plaintiffs have failed to demonstrate the market impact of that deficiency.

III. CONCLUSION

For the reasons set forth above, the court concludes that Plaintiffs' request for a reduction in value must be denied. Plaintiffs have not established that the statutory prohibition against the sale of their property prior to the recording of the plat rendered their property valueless.

Additionally, Plaintiffs have not established that their neighbors erected their home in violation

of applicable setback requirements; nor have they established what, if any, impact such a violation would have in the value of their property. Finally, Plaintiffs have not established that a required homeowners agreement does not exist and, if that is true, how the nonexistence of such an agreement impacts the value of their property. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is denied and the values on the assessment and tax rolls for the years at issue are upheld.

Dated this 23rd day of March 2006.


DAN ROBINSON
MAGISTRATE

If you want to appeal this Decision, file a Complaint in the Regular Division of the Oregon Tax Court, by mailing to: 1163 State Street, Salem, OR 97301-2563; or by hand delivery to: Fourth Floor, 1241 State Street, Salem, OR.

Your Complaint must be submitted within 60 days after the date of the Decision or this Decision becomes final and cannot be changed.

20140808 email exchange Fancher & Mathers Outrageous Misinterpretation.pdf

----- Original Message -----

From: "Liz Fancher" <Liz@lizfancher.com>
 To: "Andrew Mathers" <amatherslaw@gmail.com>
 Cc: "William Kuhn" <william@riskfactor.com>
 Sent: Friday, August 08, 2014 9:28 AM
 Subject: RE: ORS 215.190

Andy:

Bill:

You can use my e-mail, below, as you please. I'm not normally so strident but feel that the outcome on the setback issue was unjust.

Liz

No, I do not know the statute of limitations for bringing private actions regarding land use violations. In the governmental world (code enforcement), the violations are "continuing" violations and any statute of limitations is academic unless the violation has been corrected (except to the extent it prevents the government from imposing fines retroactively).

Jerry Martin handled the private enforcement case many years ago. That resulted in a partial win for Leigh and Bill but a loss on some of the major issues - mostly due to the testimony of then County Counsel Rick Isham and, I believe, then Community Development Department Director George Read. I was very disappointed that Judge Adler bought what I believed was an outrageous misinterpretation of the County's land use decisions which seemed, to me, to be designed to cover the County's potential liability to the Dowells for issuing the permits despite the clear meaning of the setback line on the partition plan. That said, LUBA upheld the ridiculous interpretation of measuring setbacks across the Kuhns property, . . but did so under the "plausible" interpretation standard which supports almost any interpretation no matter how much another interpretation is the clear winner - being a land use lawyer is frustrating when it comes to cases like this!

Liz

541-385-3067 (telephone)

-----Original Message-----

From: Andrew Mathers [mailto:amatherslaw@gmail.com]
 Sent: Thursday, August 07, 2014 9:27 PM
 To: Liz Fancher
 Subject: ORS 215.190

Liz

Do you know what the statute of limitations is for land use violations?

This is regarding the Dowell house. I believe this issue was already resolved. Correct?

Andrew Mathers



Oregon

Theodore R. Kulongoski, Governor

Department of Fish and Wildlife

High Desert Region

61374 Parrell Road

Bend, OR 97702

(541) 388-6363

FAX (541) 388-6281

February 13, 2006

MD-150093D Ex# 17 Pg# 1

William and Leigh Kuhn
PO Box 5996
Bend, OR 97708-5996

Leigh and William,

Thank you for interest in managing your property for wildlife benefit. It was obvious during my visit to your place that you have developed and maintained your land to preserve and protect the native wildlife habitat conditions that are so very important in this wildlife winter range area.

Regrettably, your enrollment in the Wildlife Habitat Conservation and Management Program (WHCMP) is not possible at this time due to current zoning designation of your property. In Deschutes County, only properties zoned Exclusive Farm Use (EFU) qualify for participation in WHCMP. Otherwise, your property and the management practices you use on your property are very compatible with the goals and objectives of this program.

ODFW appreciates your commitment to wildlife habitat protection.

If I can provide you with additional information on wildlife and habitat management, please let me know.

Sincerely,

Larry Pecenka, ODFW Habitat Biologist
(541) 388-6444 Ext. 29

MD-150093D Ex# 17 Pg# 1

20150914 ODF&W re WHCMP and problem with ownership

MD-150093D Ex# 18 Pg# 1

----- Original Message -----

From: Nancy Breuner

To: William@riskfactor.com

Cc: [Corey Heath](#) ; [Joy R Vaughan \(joy.r.vaughan@state.or.us\)](mailto:Joy R Vaughan (joy.r.vaughan@state.or.us))

Sent: Monday, September 14, 2015 11:56 AM

Subject: revised WHCMP materials

Dear Mr. Kuhn,

Following up on our phone conversation a bit ago, you asked that I send you an email about the Wildlife Habitat Conservation and Management Program (WHCMP) with a contact at ODFW headquarters. Joy Vaughn is the statewide coordinator of the program and she is copied on this email.

I informed you that the landowner interest form, the application and some other materials are currently being revised by headquarters staff. I think the new versions will be available online no earlier than mid-to late October.

However you stated that you are not the sole owner of the 33 acre property in question. So, until the ownership situation has been resolved, the property cannot be enrolled in WHCMP even if it meets the program's criteria.

Regards, Nancy

Nancy Breuner

Deschutes District Wildlife Habitat Biologist

61374 Parrell Road

Bend, OR 97702

(541) 388-6229

MD-150093D Ex# 18 Pg# 1

20150922 NRCS Tom Bennett re ownership funding

MD-150093D Ex# 19 Pg# 1

----- Original Message -----

From: Bennett, Tom - NRCS, Redmond, OR

To: William Kuhn

Sent: Tuesday, September 22, 2015 2:49 PM

Subject: RE: I understand grant money and 50% ownership don't mix

Bill,

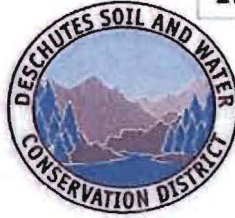
I'm reluctant to comment on eligibility criteria for other agencies programs but I can explain how it works for NRCS financial assistance programs. Applicants who do not own the land where conservation work is requested are eligible for financial assistance for those practices on that land provided that they document that they have control of the land for the length of their contract with us and permission from the owners for any structural or vegetative practices. Typically that would be a lease if it is a tenant and sometimes a written confirmation from the owner for specific types of practices. Other eligibility factors, such as maximum income limits for the participant (and no marijuana production) must be met. My experience with joint ownership has mostly been spouses or family members who are listed as owners so we have some confidence that there is agreement with the proposal. In situations like yours with truly separate owners, we would probably want something from the other owner authorizing the conservation practices. It would be between you who was a participant on the contract and who pays for what.

For our Environmental Quality Incentives Program (EQIP for your love of acronyms), access to financial assistance is based on whether the request falls within the scope of one of the funded Conservation Implementation Strategies for the area. They are based on the specific resource concerns, often in a specific area.

Let me know if you have any questions

Tom Bennett
Resource Conservationist
USDA/NRCS Redmond
541-923-4358 Ext 123
fax 855 651-8899

MD-150093D Ex# 19 Pg# 1



DESCHUTES SOIL AND WATER CONSERVATION DISTRICT
625 SE Salmon Avenue, Suite 7, Redmond, OR 97756
Phone (541) 923-2204

September 30, 2015

Bill & Leigh Kuhn
65575 Sisemore Road
Bend, OR 97701

RE: GRANT PROGRAM APPLICATION

Dear Bill & Leigh,

The Deschutes Soil and Water Conservation District (DSWCD) provides assistance to private landowners in Deschutes County to conserve and enhance natural resources. In that capacity, the DSWCD assists landowners by writing grant applications for conservation and restoration efforts on their lands. You asked that I send you information about our small grant program through the Oregon Watershed Enhancement Board and other grant funders for these types of projects.

The most important application criteria is that all the owners of a property sign the grant application as well as the grant agreement. Other requirements include landowner participation which includes the landowner(s) participating through a cost share of a minimum of 25% of the cost of the project. In some instances, the landowner labor counts towards those project costs.

You stated that you are not the sole owner of the 33 acre property in question. So, all the landowners would need to sign the grant application as well as the grant agreement. We could not accept an application without signatures and commitments from all owners of the land.

Please contact me if you have any additional questions or concerns.

Sincerely,

Tammy Harty
Manager, Deschutes Soil and Water Conservation District