

Kuhn
vs
Deschutes County Assessor Scot Langton

MD-150093D Ex# 29 ~Pgs# 3

**20150109 DesCo and safety permits
one granted one not ____**

2 - 3 November 2015

20150109 DesCo and safety permits one granted one not.pdf

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

From: Nick Lelack

To: william@riskfactor.com

Cc: Lori Furlong

Sent: Friday, January 09, 2015 1:50 PM

Subject: Heater replacement permit

Hi Bill,

Yes, CDD will issue permits to address public health and safety issues, including your heater replacement.

I am cc'ing Administrative Manager Lori Furlong so she may inform her staff.

Thank you.

Nick Lelack, AICP, Director
Deschutes County Community Development Department
PO Box 6005
117 NW Lafayette
Bend, OR 97708-6005
Office: 541.385.1708 / Cell: 541.639.5585 / Fax: 541.385.1764
www.deschutes.org/cdd

If County can issue a permit for public health and safety issues, surely it can issue the other party a permit to remove the illegally built bedroom in the garage.

Deschutes County Property Information

Dial Links: Dial Home Dial Help Deschutes County Links Home Other Property Applications Other Online Applications

To access Dial Enhanced, please log in. **LOG IN REGISTER**

New Search Interactive Map

View / Print Report Assessment & Taxation **Warnings/Notations** Service Providers Development Transportation How to Use Dial **Print Report Print Page**

Warnings/Notations for account #163466

Account Information

Mailing Name: DOWELL, JEFF & PAT
Map and Taxlot: 1611190000100
Account: 163466
Site Address: 65595 SISEMORE RD, BEND, OR 97701
Tax Status: Assessable

Development Notations

The Deschutes County Community Development Department is responsible for land use and permits for properties in the County's jurisdiction. Contact this department if you need additional information or if you have questions.

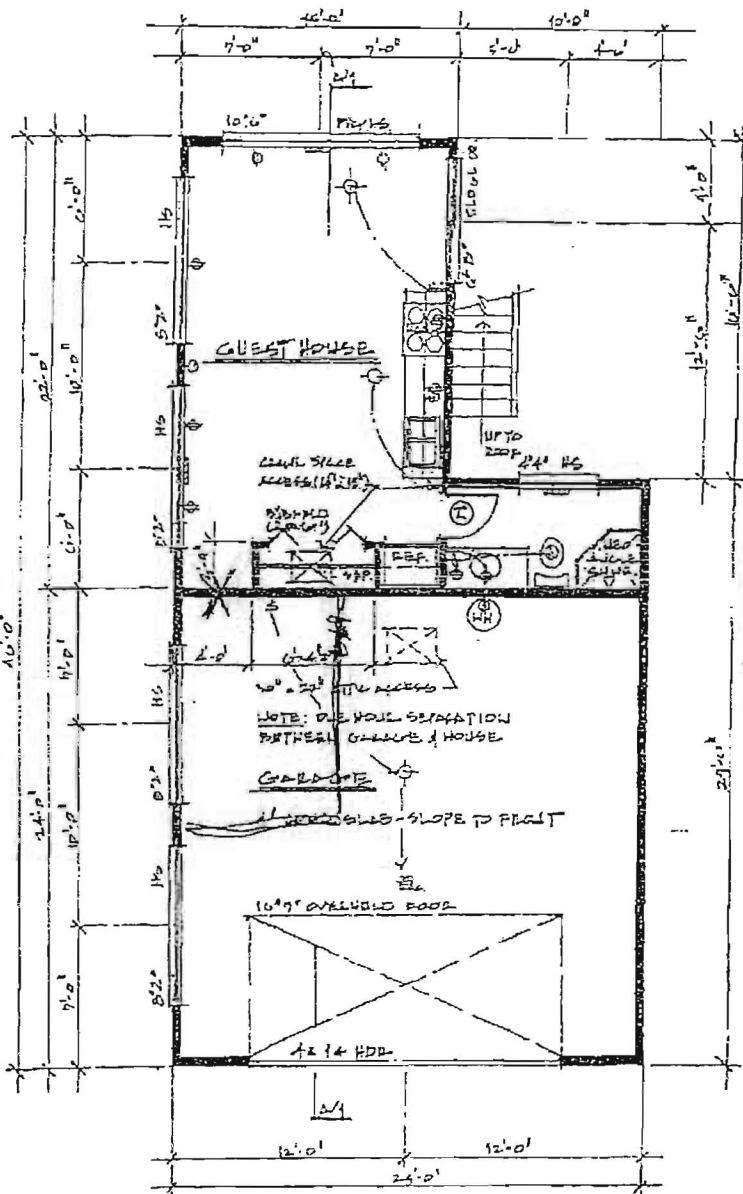
Type	Description
Code Enforcement	There is an unresolved code enforcement violation on this property. Please call Deschutes County Community Development Code Enforcement at (541) 385-1707 for more information.

Warnings/Notations

Review of digital records maintained by the Deschutes County Assessor's Office, Tax Office, Finance Office, and the Community Development Department indicates that there are County tax assessment or property development related notations associated with

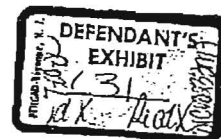
MD-150093D Ex# 29 Pg# 1

THE X
DRAWN BY
THE DOWELLS
SHOWS THE
REMOVAL OF
A WALL TO
CREATE A DOOR
TO THE NEW
BEDROOM.
THE DOOR
BETWEEN
THE BEDROOM
AND GARAGE
WAS SHOWN
TO BE ~
2 FEET FROM
THE BACK
WALL OF THE
GARAGE.

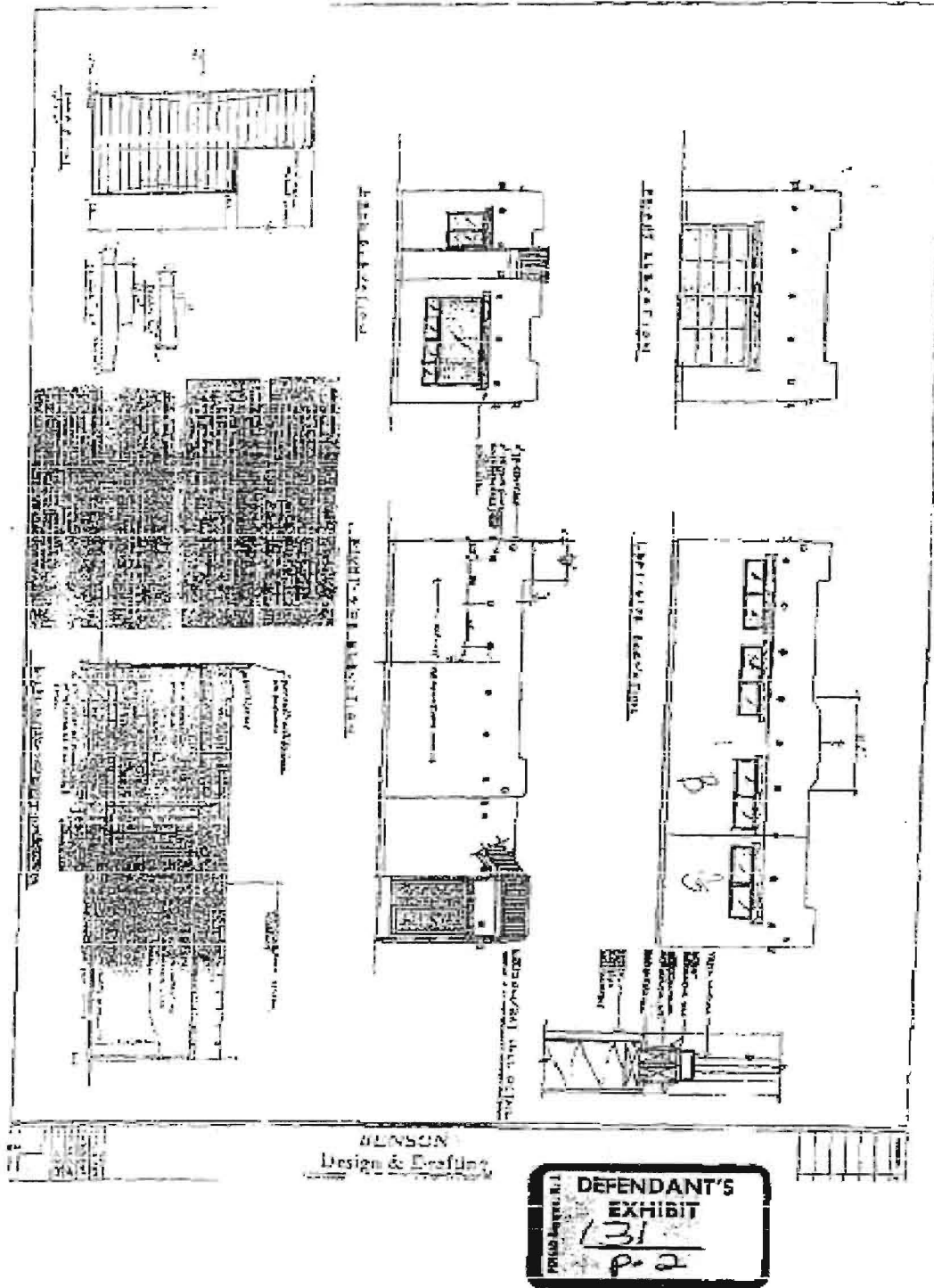


FLOOR PLAN

IN JUDGE ADLER'S
COURT THE
DOWELLS SUB-
MITTED DEFENDANT'S
EXHIBIT #131
DURING
01-CU-0233-MA
MAKING PUBLIC
THE BEDROOM
IN THE GARAGE.



The left side elevation below shows two of the four windows labeled by Dowell as being 'B' for bedroom and 'G' for garage.



MD-150093D Ex# 29 Pg# 3

Kuhn
VS
Deschutes County Assessor Scot Langton

MD-150093D Ex# 30 ~Pgs# 6

30 19990729_Djp_99h1_Lovlien with redactions 6

2 - 3 November 2015

William John Kuhn

19990729_Djp_99h1_Lovlien.pdf

PO Box 5996 Bend, Oregon 97708-5996

Martha Leigh Kuhn

Phone: (541) 389-3676

Thursday 29 July 1999 at 1:45:38 PM

NOTE: Lawyer Client privilege portions have been redacted.

Robert S. Lovlien
Bryant Lovlien & Jarvis
40 Greenwood
Bend OR 97701

w 541 382 4331

fax 541 389 3386

We have a longstanding situation with our non-resident neighbors. They own parcel #100 and ½ interest with us in parcel #300 in this cluster development. (The cluster is only three parcels: 100, 200, and 300.) See enclosed map. There is no homeowner's maintenance agreement and there is no homeowner's association to help deal with issues of conflict.

In 1980 a conditional use was granted for this cluster development based on six land use / lifestyle restrictions. ODF&W withdrew their objections to the CU after these restrictions were drawn up. These six restrictions were filed subsequently as deed restrictions #87-14178 book/page 148-1792. See enclosed restrictions as filed.

We purchased our lot #200 and ½ interest in lot #300 in 1987. In 1989 the Dowell's purchased lot #100 and ½ interest in lot #300. They refused to pay any share of the costs of bringing in utilities although they have since tapped in to the lines. In 1990 they asked us to sign their purchase contract. We did so although we received no compensation of any kind because we didn't understand we were selling anything. We signed to be "good neighbors". The purchase contract includes in its wording all of the deed restrictions with the exception of #1, which refers to "no new dogs". See enclosed purchase contract.

Beginning in 1993 through 1996 they began construction of a garage/studio apartment on lot #100. Their construction did not comply with the setback restrictions. Several other code violations also occurred. During this time we found out they intended to bring dogs to this cluster development and have dogs when they move here. Our whole intent and interest in living here ourselves was to be here with as little human impact to the environment and wildlife as possible. We reminded them of the deed restrictions.

They claimed their purchase contract that we signed negated the pertinent deed restriction.

In early 1997 we had a lawyer write them a letter indicating the deed restrictions were not superseded by their purchase contract and that the contract didn't mean much because we received no compensation. See enclosed letter.

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We were able to get the Dowells to begin mediation in April 1997. For 2½ years we have tried to reach some accord or mediated agreement. This has been unsuccessful. During these efforts other things have occurred to clearly demonstrate they have no interest in our concerns and we would be foolish to trust them.

After all this they still contend the "no-new-dog" deed restriction does not apply to them because of the purchase contract.

They have recently informed us they do not wish further discussion on dogs and they will apply to partition lot #300 presumably under the misguided impression we can no longer claim the "no-new-dog" deed restriction can apply to their property.

We are opposed to partitioning because of winter deer range minimum acreage issues we wish to support and because it would raise our taxes.

We believe we again need legal advice on how to deal with this situation. Can you help?

Some of our questions include:

1. How can we convince the Dowells they can not bring dogs here?
2. Can we prevent the joint parcel from being partitioned?
3. What are the estimated costs for your suggested options?

We have also been trying to get the County to respond to issues regarding homeowner's associations and maintenance agreements. The purchase contract and deed restrictions have confused the situation. (Note: we want a homeowner's association because this cluster has deed restrictions that cover all parcels.)

Sincerely,

William John Kuhn
WJK/k

MD-150093D Ex# 30 Pg# 2



The Dowells keep hitting us over the head with the Contract dated 900711 saying there is no mention of the "no-new-dog" provision and the contract takes precedence over the earlier deed restrictions. We have asked for a Homeowners Maintenance Agreement and Homeowners Association that will stipulate how to deal with deed restriction problems, other possible difficulties, paying taxes on the joint lot, preservation, care, maintenance, and activity restrictions on the joint property. There has been no movement in a positive direction.

We have been frustrated with how the Dowells repeated refusal to pay any share of the costs of bringing in the utility line extensions to the cluster even though they are using these lines. We have been frustrated with how the Dowells have systematically undermined the integrity and the principals mentioned in the deed restrictions and in their own purchase contract. Specifically: "This contract carries with it the strongest encouragement to demonstrate sensitivity to living within the boundaries of the Tumalo Winter Deer Range, and urges the owners to adjust their lifestyle accordingly." We have also been frustrated by the Dowell's lack of respect for county ordinances and building codes. In several communications to us the Dowells have frequently said that, "We're worlds apart in both opinion and perspective".



We contend:

The Dowells are in violation of their own purchase contract by not demonstrating sensitivity to living within the boundaries of the Tumalo Winter Deer Range, and have not adjusted their lifestyle accordingly.

1. Obtained new dog after purchasing their property with the stated intent of bringing the dog to the property & continue to acquire new dogs after moving here. They have written that they will move in with dogs.
2. Placed footprint of homesite outside the 400-foot limit from road.
3. Maintained property in violation of LM-92-9 by cutting large old trees that were not in the construction zone.
4. Maintained property in violation of LM-92-9 by not painting or staining the white-gray walls making the structure a standout eyesore.
5. Established two residences in a single family zone.
6. Attached second septic line to septic system.
7. Offered to rent to an owner of dog(s).
8. Dumped refuse in a dangerous and an unsightly manner.

NOTE: Lawyer Client privilege portions have been redacted.

NOTE: Lawyer Client privilege portions have been redacted.

Can we place a lien against their property? If so, how do we do it?

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Regarding our attorney – and what attorney needs to do.

NOTE: Lawyer Client privilege portions have been redacted.

contract.

1. Get copy of Original Dowell-Burchett contract filing 193/75 on 890928.4. The two contracts are exactly the same except for the listing of sellers. Both the Kuhns have been added to the 900711 contract.
2. Show difference between the two contracts.
 - A) The title of the 890928 contract says "Contract – Deed", the title of the 900711 contract says "Contract".
 - B) Paragraph one of the 89 contract reads "This agreement made and entered into this 3rd day of August 1989, by and between MARK BURCHETT, hereinafter "seller" and JEFF and PATTI DOWELL, hereinafter "purchaser", witnesseth that:".
 - Paragraph one of the 90 contract reads "This agreement made and entered into this 3rd day of August 1989, by and between MARK BURCHETT, MARTHA LEIGH KUHN, WILLIAM JOHN KUHN, hereinafter "seller" and JEFF and PATTI DOWELL, hereinafter "purchaser", witnesseth that:".
 - C) Paragraph two-labeled (I) and paragraph three seem to describe the joint ownership parcel. Because of our lot line adjustment we assume the second contract corrects the description of this jointly owned lot. (Please note that I have not verified that this assumption is correct.) Otherwise it appears that there is no difference except that Both the Kuhns are listed as sellers in the second contract.
3. Determine if the second contract dated 900711 makes the first contract dated 890928 null and void. Therefore, only the second contract is valid.

4. NOTE: Lawyer Client privilege portions have been redacted.

5. NOTE: Lawyer Client privilege portions have been redacted.

6. Is there any way to inform prospective buyers of the Dowell's property, prior to the sale, of the hornets nest that the Dowells have created?



We want the Dowells to respect the deed restrictions with the force of law behind it

1. We want to get to the point that if the Dowells bring a dog to this cluster then they run the risk of going to jail for violating a court order.

2.

NOTE: Lawyer Client privilege portions have been redacted.

We will settle with the Dowells IF AND ONLY IF

1.

NOTE: Lawyer Client privilege portions have been redacted.

2. There is a Homeowners Maintenance Agreement and a Homeowners Association established (to the Kuhn's satisfaction) that deals with problems that develop between neighbors (especially dogs).

3.

NOTE: Lawyer Client privilege portions have been redacted.

4. We require ownership of the third parcel is turned over to the Kuhns .

5. The Dowells pay one half of the cost plus interest (at 9½%) of the utility extension lines that they are enjoying.

6.

NOTE: Lawyer Client privilege portions have been redacted.

Or



Kuhn
vs
Deschutes County Assessor Scot Langton

MD-150093D Ex# 31 ~Pgs# 41

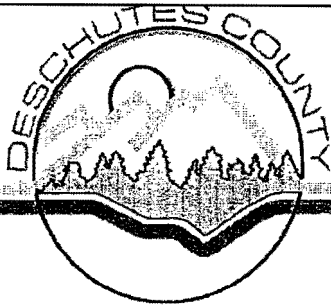
DCPC Kuhn Text Amendment 2003 ____

20030703_PC Memo Kuhn Proposal.pdf ____

20030710_PlanningCommMinutesWithAdds.pdf ____

20030717_TranscriptRequest.pdf ____

2 - 3 November 2015

**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/>

MEMORANDUM

TO: Deschutes County Planning Commission

FROM: Damian Syrnys, Senior Planner

CC: George Read, Director; Catherine Morrow, Principal Planner;
Laurie Craghead, Assistant Legal Counsel

DATE: July 3, 2003

SUBJECT: William John and Martha Leigh Kuhn Request for Code Amendment

Purpose.

William John and Martha Leigh Kuhn presented a request to the Planning Commission to amend the County Code regarding conditions of land use approvals at the Commission's June 12, 2003 regular meeting. The Kuhns submitted a letter to the Commission (attached) that proposed the following language:

All prior preconditions of any prior commitments of development must be complete before any land use process may continue or be processed further. Any precondition of development found to be incomplete shall result in the denial of any current application process.

Staff has researched this matter and has prepared this memorandum to provide the Commission with background information on the current policies and procedures for code enforcement in the County.

Code Enforcement Policy and Procedures.

In the latter part of 1995, the Board of County Commissioners adopted a Code Enforcement Policy and Procedures Manual (manual). The policy and manual became effective on January 1, 1996 and apply to code enforcement actions, building, environmental health, and land use permits and approvals applied for and issued on or after this date. The Board adopted this policy and document after more than a year of work performed by a code enforcement committee and Staff of the Community Development Department, Legal Counsel, and Sheriff's Office. Staff has provided a copy of this manual, amended last in 1998, to each Planning Commissioner.

The policy and procedures manual (manual) addresses procedures and goals for obtaining compliance with the county codes. This manual applies to code enforcement of all areas under the Community Development Department's purview: building, environmental health, and land use. One of the land use compliance issues addressed in the manual is compliance with conditions of land use permits. The manual includes the following policies that are related to this issue:

J. *Restricting Issuance of Development Permits.* In some cases, persons apply for land use, construction and/or environmental health permits to develop property upon which there already exist uncorrected county code violations. In addition, in some cases, persons apply for permits for "accessory" structures, such as garages and other outbuildings, that are later converted to non-permitted "primary" uses, such as a residences. In such cases, the only effective way to correct or prevent code violations may be to restrict the application for and/or issuance of such development permits.

(Note: Additional county code and/or statutory authority may be needed to allow refusal to accept permit or approval applications or to refuse to issue permits or approvals due to pending code violations.)

It is the county's policy, to the extent authorized by law, not to issue permits or approvals, nor to renew or extend permits and approvals, for development on any property on which there already exist uncorrected code violations. The restriction should continue until such violations are corrected.

It is also the county's policy not to issue permits or approvals, nor to renew or extend permits or approvals, for "accessory" structures, such as garages and outbuildings, on vacant property, on property on which there does not already exist a permitted primary residential or commercial use, and on property for which a permit or approval for a "primary" use is not sought simultaneously with the "accessory" use permit or approval. The restriction should continue until the primary permitted use is established or a permit for it is sought.¹

With respect to the first policy cited, this practice occurs at this time through one of several ways. Staff reviews compliance with conditions of approval of a land use permit (e.g. site plan review) before issuance of a building permit. Verification of compliance with conditions of approval may also occur prior to the approval of final occupancy of a building.

The above-cited language also identified potential changes to the County Code that may be needed to address this issue of whether to accept or issue permit applications due to pending code violations. The question of "pending code violations" is broad and can include building, environmental health, and/or land use violations, including unsatisfied conditions of a land use permit that may or may not be related. In addition, one of the more complex issues in enforcing land use permit conditions is how to deal with unsatisfied conditions of prior approvals. This issue can arise in situations when property owners acquire property with existing land use approvals and discover during a subsequent land use permitting process that conditions from a prior land use permit issued for their property (e.g. conditional use permit) had conditions of the approval that were not satisfied by the former property owners. In addition, additional code changes beyond those proposed by the Kuhns as well as statutory changes may be required to

¹ Deschutes County Code Enforcement Manual (1996) revised 1998

provide counties the authority to enforce conditions on land use permits issued using criteria no long in effect or that have changed.

With respect to the second policy cited, the manual provides an exception for applications for land use permit applications submitted to correct an existing code violation. For example, a conditional use permit for fill and removal would be allowed to be submitted to correct a violation of conducting fill and removal in a flood plain. A second conditional use permit would not be submitted for the same property for a new use until the fill and removal matter had been resolved.

Title 18, County Zoning Ordinance.

Two common forms of land use permit used for administering the zoning ordinance are site plan review and conditional use permits. As a practice, the Planning Division verifies conditions of approval are satisfied prior to the issuance of a building permit that has been sought to construct a building under an approved conditional use permit and/or site plan review. The following sections of the Zoning Ordinance further address enforcement and compliance:

1. Site Plan Review. DCC 18.124.030(D) "Noncompliance with a final approved site plan shall be a zoning ordinance violation." As part of an application review process, Staff can verify if prior conditions of a land use permit have been satisfied. In some cases, unresolved matters (e.g. landscaping) can be addressed and resolved during the review process. An example can include requiring landscaping to be completed prior to final occupancy approval of a building expansion. This is not always the case and varies on a case by case basis.
2. Conditional Use Permits. DCC 18.128.400, Occupancy Permit, and DCC 18.128.420, Building permit for an approved conditional use. The first section cited allows the Planning Director or a Hearings Body (e.g. Hearings Officer) to require an occupancy permit prior to initiation of the conditional use. The purpose of requiring such a permit can include verifying conditions of the permit have been satisfied prior to issuance of the occupancy permit. The second section cited provides the Planning Director the authority to issue a building permit for an approved conditional use only on the basis of the plan approved by the Director or a hearings body.

You will find copies of the above-cited sections enclosed with this memorandum. The current practice in the Current Planning Section regarding conditions of approval is two-fold: 1) draft conditions related to the approval criteria that the applicant can complete, and; 2) ensure these conditions are met prior to the issuance of a subsequent permit or approval. It was the practice of the staff to include conditions requested by other agencies (e.g. Road Department) and to rely on such departments to enforce their own conditions. The practice has changed so that only conditions that are within the power of the applicant to complete are imposed. The imposition and enforcement of such conditions can ensure the applicant's proposal ultimately complies with an approval criterion. These conditions are often enforced prior to some future action taking place. Such actions can include, for example, issuance of a building permit and/or final occupancy approval of a building.

Title 17, Subdivision and Partition Ordinance

In addition to land use permits involving development, the Planning Division also administers Title 17 of the County Code, which is the County Subdivision and Partition Ordinance. Chapter 17.24, Final Plat Review, outlines the final requirements for obtaining approval of either a partition or a subdivision plat before it can be recorded with the Deschutes County Clerk. The Planning Division Staff use a "final plat review" process to review final plats, to ensure that all conditions of a tentative approval have been met, and to obtain final signatures on a plat before the applicant records the plat with the Clerk. You will find enclosed a handout sheet on the steps for final plat review used today.

Conclusions

Staff has attempted through this memorandum to show that the Kuhns' have raised a legitimate issue related to improving code enforcement in the county. The County has adopted a code enforcement policy and procedures manual, and uses existing language in the county code, to enforcement conditions of land use permits. Additional work by legal counsel and potential County Code and state statute amendments may be required provide the County the legal authority to enforce conditions as proposed by the Kuhns.

The Planning Commission has several options on how to proceed with this proposal:

1. Take no action.
2. Direct staff to add the project to the list of Non-Committed projects. This project could be part of a master list of uncommitted projects considered next year when the Commission reviews the Division's work program for FY 2004-05.
3. Propose to the Kuhns the submittal of their own application for an ordinance text amendment.

/DPS

Enclosures

1. June 12, 2003 letter from William John and Martha Leigh Kuhn
2. May 30, 2003 letter from Laurie Craghead
3. Copy of Section 18.124.030(D) of DCC
4. Copy of Sections 18.128.400 and 420 of DCC
5. Final plat review checklist

William John Kuhn

Martha Leigh Kuhn

PO Box 5996 Bend, Oregon 97708-5996

Phone: (541) 389-3676

Thursday 12 June 2003

Deschutes County Planning Commission

Bend, OR 97701

RE: Suggestion for Ordinance

Dear Planning Commission,

My wife and I would like to suggest an ordinance that to us seems logical and certainly might help deal with the type of developer who gives a bad name to development.

All prior preconditions of any prior commitments of development must be complete before any land use process may continue or be processed further. Any precondition of development found to be incomplete shall result in denial of any current application or process.

The County has numerous codes that on the surface seem adequate to produce a desired affect yet in actuality fall flat on their face because they are not always enforced or implemented properly.

Take for example the developer of a cluster development who is required by ordinance to have a homeowners' association and a joint owners' agreement in place before the sale of the first parcel. The developer fails to implement the association and neglects the agreement. A sale goes through because no one at the County actually looks over the shoulder of the developer. Later a dispute arises between homeowners and there is no agreement outlining a procedure to follow to remedy the difficulty, or what happens when all joint landowners do not pay their share of taxes in joint property, etc.

For your information, when we suggested a version of this ordinance to Laurie Craghead, County Legal Council, she suggested that the 150-day deadlines in ORS 215.427(1) and Deschutes County Code ("DCC") 22.20.040(A), must be dealt with. She also suggested that the Provisions in ORS 197.522, 215.110(6) and ORS 215.427(3) requiring the County to approve applications under the regulations in effect at the time of the application and overcome the prohibition against retroactive legislation in ORS 215.110 need to be considered.

We believe it is worthwhile considering that applications cannot and should not even be considered until all provisions of previous conditions have been met. We do not understand why the County would not want their requirements be honored as the ordinances now stand, but this is not happening.

Please consider our request as an effort to assure that law-abiding residents' rights are respected in the land use process.

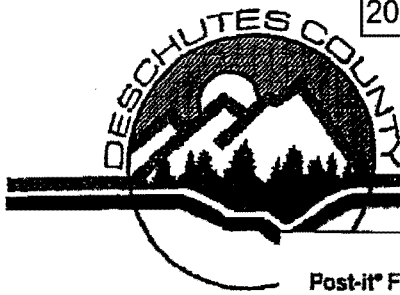
Thank you for your consideration,

William John Kuhn *Martha Leigh Kuhn*

William John Kuhn

Martha Leigh Kuhn

20030703_PC Memo Kuhn Proposal.pdf



Legal Counsel

ADMINISTRATION BUILDING • 1130 NW HARRIMAN • BEND, OREGON 97701
FACSIMILE 541-383-0496

Post-It® Fax Note	7671	Date	6/2/03	# of pages	3
To	BILL	From	JERRY		
Co./Dept.		Co.			
Phone #		Phone #	389-5010		
Fax #	383-8883	Fax #			

Richard L. Isham ☎ 541-388-6625
Mark P. Amberg ☎ 541-330-4645
urle E. Craghead ☎ 541-388-6593

PLEASE REFER TO
FILE NO.: 4-193

May 30, 2003

Mr. Gerald Martin
Francis & Martin
1199 NW Wall Street
Bend, OR 97701

JUN 3 2003
01-037

The purposes of this letter are to follow-up of our discussion when you, William Kuhn and Leigh Kuhn met with me at 10:00 a.m. on Friday, April 25, 2003. I apologize for the delay in this response but have been out of the office several days since our meeting. The following is my understanding after reviewing my notes from our meeting:

1. Mr. and Mrs. Kuhn requested that Deschutes County enforce the court's order in *Kuhn v. Dowell*, Circuit Court Case No. 01CV0233MA, which ordered the Dowells to "enter into the required 'home owners association or agreement assuring the maintenance of common property' as set forth in the conditions required with respect to the conditional use permit." Unless you can provide us with the appropriate legal authority for doing so, because the County was not a party to the case, the County cannot enforce that court order.
2. The Kuhns requested that the County enact an ordinance with retroactive application that requires an applicant to complete all previous land use processes before the County will take action on a subsequent land use or other permit application. Because anyone can file an application for an ordinance, the Kuhns are free to propose such legislation. The County is not likely, however, to initiate such legislation unless you can provide us with a legal analysis of how we can overcome the 150-day deadlines in ORS 215.427(1) and Deschutes County Code ("DCC") 22.20.040(A), overcome the provisions in ORS 197.522, 215.110(6) and ORS 215.427(3) requiring the County to approve applications under the regulations in effect at the time of the application and overcome the prohibition against retroactive legislation in ORS 215.110.
3. Kuhns requested the County initiate an ordinance requiring home owners associations ("HOAs") "with a self-governing set of procedures." Again, the Kuhns may file an application for such an ordinance. Given, however, the rural nature of the lots in the County and that subdivision (four or more lots), other than in destination resorts, are rare, the County is not likely to initiate such an ordinance.
4. The Kuhns asked if they could file for a declaratory ruling from the County as to whether the Dowells must comply with previous land use approval conditions before receiving any subsequent land use approvals on the subject property in light of DCC

Quality Services Performed with Pride

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20030703_PC Memo Kuhn Proposal.pdf

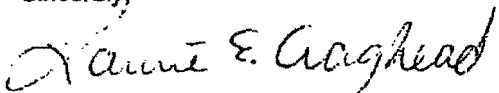
Mr. Gerald Martin
May 30, 2003
Page Two

22.40.010(A). Pursuant to DCC 22.40.020 only owners of property wanting rulings regarding the uses on their own property, permit holders wanting interpretations of their approvals and the Planning Director may apply for declaratory rulings.

5. The Kuhns requested a "more cordial reception" by the Board of County Commissioners and the County staff. Please see attached email.
6. The Kuhns requested that County staff cease telling the Dowells that approval of their plans to expand their existing dwelling was guaranteed. County staff and the Dowells' legal counsel have assured me that County staff has not given the Dowells such assurances.
7. The Kuhns want to engage in one more effort at arriving at a settlement of both the County land use matter and the Court of Appeals case. To this end, the proposal given by you was to not engage the services of Mary Forst or any other mediator but to have all the parties and their legal representatives meet to discuss possibilities. I have discussed this matter with the Board of County Commissioners and they are agreeable to this approach.
8. The Kuhns request a method of being able to present their above listed concerns to the Board of County Commissioners and not violate the ex-parte contact prohibition for the quasi-judicial matter currently before them. At this time, I am unable to devise such a method other than the email I provided in answer to Item 5 above.

If you feel anything stated above has been misstated or misunderstood, feel free to provide written comments. Additionally, if your client still desires to meet with the parties for settlement discussions let me know and I can arrange for a conference room. For your information, I am available June 3, 6, 10 (except for 11:45 a.m. to 1:15 p.m.), 12 (after 10:00 a.m.), 13 and 20.

Sincerely,



Laurie E. Craghead
Deschutes County Assistant Legal Counsel

/ljk
Enclosure

Chapter 18.124. SITE PLAN REVIEW

18.124.010. Purpose.

18.124.020. Elements of site plan.

18.124.030. Approval required.

18.124.040. Contents and procedure.

18.124.050. Decision on site plan.

18.124.060. Approval criteria.

18.124.070. Required minimum standards.

18.124.080. Other conditions.

18.124.090. Right of way improvement standards.

18.124.010. Purpose.

DCC 18.124.010 provides for administrative review of the design of certain developments and improvements in order to promote functional, safe, innovative and attractive site development compatible with the natural and man-made environment.

(Ord. 91-020 § 1, 1991)

18.124.020. Elements of site plan.

The elements of a site plan are: The layout and design of all existing and proposed improvements, including, but not limited to, buildings, structures, parking, circulation areas, outdoor storage areas, bicycle parking, landscape areas, service and delivery areas, outdoor recreation areas, retaining walls, signs and graphics, cut and fill actions, accessways, pedestrian walkways, buffering and screening measures and street furniture.

(Ord. 93-043 § 22D, 1993; Ord. 93-005 § 6, 1993)

18.124.030. Approval required.

- A. No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to DCC 18.124.030, nor shall such a use be commenced, enlarged, altered or changed until a final site plan is approved according to DCC Title 22, the Uniform Development Procedures Ordinance.
- B. The provisions of DCC 18.124.030 shall apply to the following:
 - 1. All conditional use permits where a site plan is a condition of approval;

- 2. Multiple-family dwellings with more than three units;
- 3. All commercial uses that require parking facilities;
- 4. All industrial uses;
- 5. All other uses that serve the general public or that otherwise require parking facilities, including, but not limited to, landfills, schools, utility facilities, churches, community buildings, cemeteries, mausoleums, crematories, airports, parks and recreation facilities and livestock sales yards; and
- 6. As specified for Landscape Management Combining Zones (LM), Flood Plain Zones (FP) and Surface Mining Impact Area Combining Zones (SMIA).

C. The provisions of DCC 18.124.030 shall not apply to uses involving the stabling and training of equine in the EFU zone, noncommercial stables and horse events not requiring a conditional use permit.

D. Noncompliance with a final approved site plan shall be a zoning ordinance violation.

E. As a condition of approval of any action not included in DCC 18.124.030(B), the Planning Director or Hearings Body may require site plan approval prior to the issuance of any permits.

(Ord. 94-008 § 14, 1994; Ord. 91-038 § 1, 1991; Ord. 91-020 § 1, 1991; Ord. 86-032 § 1, 1986)

18.124.040. Contents and procedure.

- A. Any site plan shall be filed on a form provided by the Planning Department and shall be accompanied by such drawings, sketches and descriptions necessary to describe the proposed development. A plan shall not be deemed complete unless all information requested is provided.
- B. Prior to filing a site plan, the applicant shall confer with the Planning Director or his representative concerning the requirements for formal application.
- C. After the pre-application conference, the applicant shall submit a site development plan, an inventory of existing plant materials

18.128.380. Procedure for taking action on conditional use application.

The procedure for taking action on a conditional use application shall be as follows:

- A. A property owner may initiate a request for a conditional use by filing an application on forms provided by the Planning Department.
- B. Review of the application shall be conducted according to the terms of DCC Title 22, the Uniform Development Procedures Ordinance.

(Ord. 86-032 § 1, 1986)

18.128.390. Time limit on a permit for a conditional use.

Duration of permits issued under DCC 18.128 shall be as set forth in DCC 22.36.

(Ord. 95-018 § 4, 1995; Ord. 91-020 § 1, 1991)

18.128.400. Occupancy permit.

The Planning Director or Hearings Body may require an occupancy permit for any conditional use permitted and approved pursuant to the provisions of DCC Title 18. The Planning Director or Hearings Body shall consider such a requirement for any use authorized by a conditional use permit for which the ordinance requires on-site or off-site improvements or where such conditions have been established by the Planning Director or Hearings Body upon approval of such use. The requirement of an occupancy permit shall be for the intent of insuring permit compliance and said permit shall not be issued except as set forth by the Planning Director or Hearings Body. The authority to issue an occupancy permit upon compliance with the requirements and conditions of a conditional use permit may be delegated to the Planning Director or the building inspector by the Hearings Body at the time of approval of a specific conditional use permit.

(Ord. 91-020 § 1, 1991)

18.128.410. Time-share unit. (Repealed by Ord. 2000-033, 2000)

18.128.420. Building permit for an approved conditional use.

Building permits for all or any portion of a conditional use shall be issued only on the basis of the plan as approved by the Planning Director or Hearings Body. Any substantial change in the approved plan shall be submitted to the Planning Director or the Hearings Officer as a new application for a conditional use.

(Ord. 91-038 § 3, 1991; Ord. 91-020 § 1, 1991; Ord. 89-004 § 3, 1989)



FINAL PLAT REQUIREMENTS FOR A PARTITION OR SUBDIVISION

To complete a final plat for a Partition or Subdivision, the following steps are necessary.

1. The final plat must be prepared in accordance with all requirements of Chapter 17.24 of the County Code. Copies of these requirements may be obtained from the Planning Division.
2. All conditions of approval specified in the findings and decision must be completed.
3. The applicant shall circulate the plat for signature of all owners who must sign it. Fees and bonds or security agreements must be paid prior to signature of the plat by department heads. Examples include: plat checking and filing by the County Surveyor; calculation and payment of taxes by the Assessor's and Treasurer's Offices (a copy of the plat is necessary for this purpose); and road improvement agreements and inspections and access permits by the Public Works Department. Deeds for road dedications must be delivered to the Public Works Department with the plat prior to Public Works approval. The plat is to be returned to the Community Development Department for the signature of the Environmental Health and Planning Director. Fees for various plat related costs are attached.
4. Final plats are subject to a final plat review process and fee. This requires an application and fee at the time of leaving the final plat with the Planning Division. This application may be made at the Planning counter or by appointment with the planner who was the staff contact of the original application. A Final Plat application may also be turned in by attaching the appropriate fee and leaving the Plat at the reception window.
5. After submittal of the Final Plat to the Planning Division, it is reviewed for conformance with all conditions of approval. This may require a site visit and review by legal counsel. In most cases this can be completed within two weeks. When the plat is signed by all necessary parties, the Planning Division will take the Plat to the Chairperson or Vice Chairperson of the Board of County Commissioners for his or her signature.
6. After the Chairperson or Vice Chairperson of the Board has signed the final plat, it must be picked up by the applicant for duplication. Two mylar copies (which must be certified as true and exact copies of the originals) and 15 blue line copies are required. When the blue line copies are prepared, they must be returned to the Planning Division.

7. The final step is recording the plat with the County Clerk. No plat may be recorded unless it is accompanied by a signed statement of water rights unless the plat displays approval of an irrigation district. A recording fee is required at the Clerk's Office. Signature in the space below by a planner will allow issuance of a plat number and recording by the County Clerk's Office. **The County Code prohibits the Clerk's Office from recording plats without final Planning Division approval.**

File # _____ is complete and the plat may be recorded by the County Clerk.

Planning Division

Date

File # _____ has been recorded in Volume _____ and Page _____

Plat Cabinet _____ Partition Plat No. _____

County Clerk's Office

Date

William John Kuhn

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Martha Leigh Kuhn

PO Box 5996 Bend, Oregon 97708-5996

Phone: (541) 389-3676

Thursday 17 July 2003

Bonnie Burkhart
Hurley Lynch & Re, Attorneys
747 SW Mill View Drive
Bend, Oregon 97702

541 317 5505

Regarding the Deschutes County Planning Commission meeting of 10 July 2003

Dear Ms. Burkhart,

The enclosed tape is about 35 minutes long and covers agenda items 1) approve minutes of previous meeting; 2) public input – there was none; and 3) a discussion of the proposed ordinance put forth by William John and Martha Leigh Kuhn. (This is all that needs transcription.)

The Planning Commission Board Members that were present were:

Everett Turner, Chair
Tammy Sailors, Vice-Chair
Peter Gramlich, Commissioner
Brenda Pace, Commissioner

The County Staff that were present were:

George Read, Head of Community Development Department
Damian Syrnyk, Planner
Laurie Craghead, Legal Council

We would like an electronic version in Word format. You may contact us at William@RiskFactor.com.

Sincerely,

William John Kuhn

WJK/k

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DESCHUTES COUNTY PLANNING COMMISSION

Board of Commissioners Hearings Room

Minutes - July 10, 2003 – 5:30 p.m.

Everett Turner: Today is June 10, 2003. Commissioner on my left is Peter Gramlich, Tammy Sailors on my right, Brenda Pace. I'm Everett Turner, Chairman. Present from the County is Catherine Tilton and Damian Syrnky, George Read.

Laurie Craghead: Assistant legal counsel.

Everett Turner: So, the first item is the approval of the minutes. And believe it or not, we're going to –

George Read: You said June.

Everett Turner: Hmmm?

George Read: You said June. You said June is the date.

Everett Turner: July 10th.

George Read: Happy July.

Everett Turner: Thanks a lot. Do you have a motion?

Tammy Sailors: I move that the minutes for June 12th be approved.

Unidentified: Second.

Everett Turner: Motion seconded. All in favor?

Everett Turner: Brenda? Yeah. Gary?

Everett Turner: Okay, **Item No. II – Public Comments and Concerns:**

Anything from the audience? Staff?

Okay, moving right on. **Item No. III – The Request from John and Martha Leigh Kuhn.** Is this fading in or out?

Unidentified Fem: Yes, it is.

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Everett Turner: Just so I'm not. Catherine was going to handle that. Are you going to handle that, Damian?

Damian Syrnyk: Inaudible.

Everett Turner: Oh, are you?

Damian Syrnyk: Am I picking up now?

Unidentified Fem: You are.

Damian Syrnyk: Okay. Thank you. For the record I am Damian Syrnyk with the Planning Division. Joining me in this presentation this evening is George Read, our Director of the Community Development Department, and Laurie Craghead, Deputy Assistant Legal Counsel.

Laurie Craghead: No, it's just assistant.

Damian Syrnyk: Assistant legal counsel. At your last meeting on June 12th we received a request from William and Martha Leigh Kuhn on a code amendment dealing with the enforcement of land use conditions. Since that time we've gone back and put together a memorandum that was sent out to you with your packet talking about our Code Enforcement Program, our Policy and Procedures Manual, and our current efforts in how we enforce land use conditions related to permit approvals. I will be talking about that more tonight as we consider their requests in getting a direction on how to proceed. Before I go any further though, I wanted to let you know, and I believe Mary's got copies there of two letters we've received. One was a copy of the Multnomah County Code that Mr. Kuhn e-mailed to me this afternoon, and I've provided copies to everybody that deals with this issue. The pertinent section that you'll see is Section 37.0560, and it's titled Code Compliance of Applications. The other document you'll get a copy of is a July 10, 2002

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letter from Kate Kimball. She is a local representative with 1000 Friends of Oregon, giving her views on looking at this issue of code enforcement in the County. I'm not going to go through my memorandum line by line, but before proceeding, I wanted to see if anybody had any questions before I started.

Brenda Pace: Yeah, I think I'll reserve questions until after you do it because I was confused.

Damian Syrnyk: Okay. Shall I go ahead and proceed?

Everett Turner: Unhuh.

Damian Syrnyk: Okay. As I mentioned in the memorandum, back in January 1, 1996, the County's current Code Enforcement Policy and Manual took effect. This was something that had been in the works for over a year. There was a committee that had worked on this with staff from the Community Development Department, Assessor's Office, Legal Counsel; and it was designed to create a uniform procedure for code enforcement for all aspects of code enforcement that are under the purview of the Community Development Department, Building, Land Use and Environmental Health. It's a menu I will return to when we start looking at receiving complaints, enforcing land use conditions, dealing with situations where we're possibly going to be considering a permanent application on a property that's already got some kind of a pending code violation, for example. One of the issues that this Code Manual addresses is this issue of compliance with conditions of approval. The section on page 2 of the memorandum is something I had cut and paste into the memo so you could see the language for yourself. That was a language from the version of the Manual that was amended in 1998. It

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was reviewed back at that time. And there's a couple of times that – I shouldn't say a couple of times – but I'm going to go into some areas where we deal with the enforcement of land use condition – land use approval conditions. What I'm referring to – what I think the Kuhns are referring to are conditions that are placed on a permit that are designed to be adhered to. In some cases they're placed on a permit to ensure that criteria is met. Some time ago we used to throw a lot of conditions into our approvals to make sure that people would, for example, dedicate right of way, build new permits, get an access permit, sometimes get a permit from another state agency. And I will touch on our current practices here in a little bit when I get to there.

Damian Syrnyk:

So when I start -- submit it first and talk about where we kind of deal with this issue and impose conditions on a permit. And this could be something like a conditional use permit or site plan review that I've mentioned in the memo. There is usually some kind of a trigger that we'll use to make sure that this condition is met or done before an applicant is allowed to take another step. And I have mentioned a couple of examples. One was the issuance of a building permit. In cases where we're working on an application for site plan review, we might include certain conditions on landscaping, paving a parking area, striping, storm drainage, make sure certain things are done or showing up on the building plans that are submitted to the Building Department before the Planning Division signs off on a building permit.

The second time period or situation where this comes up as a trigger is when we're about to approve what's called the final occupancy for a building. If you remember back when we were working on the Home Occupation

Ordinance, we had talked about the occupancy rating that the Building Division of the County will assign a building. They have to figure out for their purposes of reviewing for fire and life safety structural code requirements whether its residential, industrial, something like that. And that's usually the last thing that somebody gets from the County before they actually get to move into the building. In some cases, a land use permit will impose certain conditions that have to be fulfilled before the Planning Department will approve – give their approval – of final occupancy. That can include like final paving of a parking lot, fire hydrants – making sure they are put in – landscaping. Those are some of the common things that you might see.

The Kuhns raise a good issue with the way we used to impose land use permits in the past, and that practice has changed over time. As I mentioned kind of in the beginning when the County was first starting to get into the area of planning and zoning, a lot of things were thrown in for good measure. Some were easily enforceable; some weren't enforced at all. And so we've changed our practice over time to make sure that we're doing several things. One is to mention that we tie a condition to a criterion on the code. If some things are required but it's not really practical to do before you get your permit, we can tie it to a condition to make sure that criterion is met, say, before a building permit is issued. We also make sure that we're not including conditions that are beyond the control of the property owner. A few years ago we had some trouble with the permitting of the Walmart in Bend because the applicant was given approval for their building, but a condition was included that required them to go get a right-of-way dedicated

for land that they did not own. That was a hard lesson to learn in terms of what conditions an applicant has within their control and what conditions they don't.

Finally, one thing I wanted to point out in terms of change in practices that we've had. There was a bill passed in the Legislature I think back in 1999 that limited our ability to impose conditions in a couple of ways. One, they could only be tied to criteria in our code. Two, if I remember correctly, we had to give an applicant the opportunity to raise any kind of issues they had with these conditions at a hearing, for example, if they were going to a hearing. I don't recall the bill number, but I believe it was sometime around 1999. I want to kind of discuss it early so you understand what we do now days when we're looking at land use permits. You know, we try to make sure that we're imposing conditions that are within the power of the applicant that can be enforced. We don't throw in conditions that are tied anymore to making somebody go get a permit from another agency unless it is tied to a criterion. We used to have a standard practice of throwing in conditions from our Road Department, maybe other agencies, and saying "By the way, before you get your permit, go do this and this and this." We've tried to narrow that down to no longer imposing those kinds of conditions on a permit but trying to do a better job of communicating with an applicant about what other permits or approvals they might need. For example, instead of getting their septic permit from the Environmental Health Division, going to the DEQ. Going back to the Code Manual for a minute, I identified a couple of ways where we deal with this issue of permit approvals and conditions and enforcement. Right now I mentioned that our code has a provision in there

for making sure we can, in some cases, not issue a permit or accept an application if there's a pending code violation. One of the examples I've cited in my memo is that we have an exception as well where if somebody has a pending code violation of their property -- say, they've done some illegal fill and removal on the bed or banks of a river -- we'll allow them to go ahead and apply for whatever permits they need from us to go ahead and rectify that situation, like a conditional use permit. I also cited some examples in our Titles 18 and 17 where had some language that deal with this issue. (Inaudible) and I talked about our conditions for site find review and conditional use permits, and I think at our last meeting I also touched on enforcing conditions with respect to land divisions, which is a little bit more -- seems a little bit more straightforward to approach it from my experience in current planning because there's only certain actions that people need to take before they can create their survey of the new lots, their Mylar, and there's multiple checks built in and making sure that people have fulfilled requirements in the Road Department, if there's dedication and improvements, paid their taxes, up to date the assessor, made sure they've talked to the fire department about their addressing and streets and so on. So I wanted to begin the presentation this evening by kind of giving you that background about where we have language in our Procedures Manual for code enforcement on how we do conditions now a days. That's all. I will turn it over to Laurie or George to see if they have anything to add before we talk about how to proceed in looking at what the Kuhns have proposed.

George Read: Yeah, I think Damian asked me to come tonight and talk a little bit about the history. In 1996 we were -- 1995 -- we went through a pretty extensive

revamp of our Code Enforcement Program. We were receiving over 400 or 500 cases and solving about 150, and it was hard. We had people carrying signs protesting our Code Enforcement Program, and it was basically some people were harassing our Code Enforcement Officers. We made a pretty radical change and developed a Code Enforcement Procedures Manual where we play good cop / bad cop. That is, we try to get people to comply. CUD's goal is to gain compliance. We do not have any punishment. We do not intend to punish. Before, some of us were viewed as being a punishment organization, and we do not try to punish. Our whole goal is to gain compliance. So, we play that role. Then if we cannot gain compliance and we've determined it is worth pursuing and there's a whole matrix for determining whether something's good for our suing because there's a whole array of things that we get complaints on, some of which are easier and some of which are much more difficult to enforce. But anyway, if we determine it's worth pursuing based on a matrix, we turn it over to the Sheriff's Office. Our compliance rates from that are – well, we've received – we're down to I think 245 last year cases. We resolved 250. So, I guess the – I'll go back to the Code Enforcement Manual. It was written at a time, and it says we should make, to the extent we are allowed by law, make people comply with the law before they file other applications; but the times have changed, number one. Number two, the reason we haven't really implemented that, even though it says we do that, in the case of building permits, yes. If there's a land use violation, you can withhold the building permit. It says so right in the statute. If it's related to the building permit. Environmental health says the same thing. You can't get a DEQ permit, which basically we contract

with DEQ to issue septic permits, unless you comply with zoning. But for zoning, we did not find any statutory authority that gave us any greater authority to punish. So back when we did this, we put this little authority – “additional county code or statutory authority may be needed to allow us to do this.” And we left it at that because we were told by legal counsel we couldn’t do it. So I kind of went through where we’re at now. It’s a lot different than when we wrote this, and I guess then there’s this question “Should we do that -- should we withhold permits?” And I guess there’s a couple of issues. I mean, I actually was the proponent that wrote that in there so I think maybe I’ve kind of changed over time for a couple of reasons. Damian mentioned some of the legal reasons, but we do have now 150 days to process applications. If we hold somebody up, basically an application is incomplete. Even if we said it’s not complete unless you’ve solved your violations, an application by law is automatically deemed complete 30 days after they submit it. So, then we’d have to deny the application. So you’d actually be in a situation where you would be denying an application. The request by the Kuhns was to not accept – my understanding was not to accept applications until they’d solved their code cases. Well, I don’t think we can do that under the state statute.

Brenda Pace: May I ask a question?

George Read: Sure.

Brenda Pace: You mean, if you notify them that it is not complete, they simply don’t have to respond to you and it’s deemed complete?

George Read: That’s right.

Brenda Pace: So anybody can do anything they want? I mean, are you really saying that?

George Read: We have to accept any application is what it amounts to.

Brenda Pace: I mean, if it's written with a piece of paper I want to build that house, that's all I have to do?

George Read: No, no. You know, we have a procedure, and we can require them to fill out the application form and pay the fee. But beyond that, we have to deem it complete and review it.

Brenda Pace: Well, I mean if you review it and you send it to them – well, these are the things that we need.

George Read: On the 30th day, if they don't respond, it's deemed complete.

Laurie Craghead: And may I clarify "deemed complete" does not mean approved.

Brenda Pace: I understand that, but then that's when the 150 days starts running, right?

George Read: Right.

Laurie Craghead: Under current law, but there is a bill in the Legislature right now to change some of that.

George Read: Yeah, we're working to change it, but I mean the law right now says we've got to accept it anyway, so –

Brenda Pace: But then you cannot –

George Read: -- the law that says you won't accept it, doesn't work. I mean, first of all, that's the first one. The second one – the second part – would be if you got, if you did say, okay, well, I think you have the Multnomah County one which says basically you can't approve one or you won't approve it until it resolves. So now you've accepted it as complete, but you won't approve it. Okay? And that's a criteria. There's some other issues that might go along with that. Number one, this might be punishment that's beyond our authority. We have a \$1,000 maximum fine. There's no authority in the statute that says we can

have any other kind of punishment. There is a case right now actually in Polk County, my understanding, on this very issue because they do have language authorizing withholding permits; and I think they're going to go through that process. Laurie can talk a little bit about that. Actually Laurie worked in Multnomah County where the ordinance that was submitted came from.

Another issue that's a little bit difficult is when is a violation a violation? You know, the only violation that – you know, I mean is a violation an alleged violation if we say it's is not done. Is it a violation or not? Are we right? What's the process for determining if we're right? And that's a different – you know, you'd have a different code enforcement process as part of the land use process we had this determination of violations as part of the determination. So, my theory is you'd probably have to have an adjudicated violation. You'd have to have one where somebody was found guilty by the judge. Okay? And if you had one that was, well, those might be ones where we could say "Yes, there's violation." All the other ones, it would be an alleged violation. Now, of the 250 or so cases we closed last year, I think there were about 23 that went to the judge. So, I mean, I'm not sure that we're going to get as far as we would like to get with that kind of language.

Then, there's this other issue – what if – they're totally unrelated. I use an example because I know of one. I think Sunriver Properties did a fill and removal for their boat dock ten years ago. It's a violation. They basically made peace and didn't get a permit, but it's still there but that's a violation. They didn't comply. Therefore, when they want to build a clubhouse on the

golf course two miles away, do we withhold the permit. I mean, so whatever you did, you'd have to draft some language to either make it related or not make it related, and then you'd have this criteria to help you determine what was related.

Laurie Craghead: And also another point for clarification. That's based on the *Dolan* case. You have to have a reasonable nexus –

Brenda Pace: Well, that's true of any condition. That true if any conditions are issued, and that's why it's part of our code --

Laurie Craghead: Right.

Brenda Pace: -- that's why you're linking these conditions to the code. So that's already covered – the fact that it's linked to the code.

George Read: Well, that's true except the application for the golf cart house, or whatever, has nothing at all to do with the fill-and-removal violation that happened ten years ago. I mean they are not related, and yet we would be withholding that permit until they resolved the violation. If you didn't, then you would need to define how it related to the two things – how they were related. I mean, we could do that. I'm just saying, but just to have the language that was proposed, it would be any violation, whether related or not, and I don't think that would pass muster.

The other one I guess I brought it up. There's timing. You know, when's the time, how long, what violation? I think Damian kind of outlined there's different times in our history, and the detail that was looked at in applications. So a violation of ten years ago, twenty years ago.

Brenda Pace: No, we're talking about a current violation. I think we're talking about a current violation.

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George Read: I don't know what that means.

Brenda Pace: I don't think we're talking about something that happened ten years ago. If you go on the property, and the violation exists on the property now, that's the criteria.

George Read: Okay, but what if it occurred 20 years ago?

Laurie Craghead: But it's still a –

Brenda Pace: If it's still a violation on the books that hasn't been resolved, and you can see this violation on the ground, then it currently exists.

George Read: Well, that would be one way of doing it, but I think there's some difficulty in proving it. As a matter of fact, the statute says that if you get away with it 20 years, it's illegal. It's a nonconforming use. So, I mean, there's this whole thing of when did it happen and was it a violation at that time, and whose job it is to prove that, and is that part of the land use process before you can apply for an application? That's what I'm getting at. There's a difficulty there. So, I'm not saying you can't do it. As a matter of fact, I'm not saying I don't it's a good idea. I just think it's a very difficult subject with a lot of details to have to fill in. I think, like I said, that once we had a little discussion with the County Planning Directors at our last meeting over this Polk County case. I think everyone – there are several counties who have this provision, and none of them enforce it anymore because they're afraid of it. So, I can maybe turn it over to Laurie to give you some legal background. If we did it, it's a pretty large project, and I think it's an interesting one. I guess my suggestion – and I think Damian, Kenneth, and Ellen have the option to do nothing. I think there's an option to put it on a Work Plan because we don't have time for it this year unless we get money to follow up

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on it because our Work Plan is full as adopted. But there's probably another one, and that is, you know, we probably could explore ways to better link those things. I think that's the one that's kind of a little bit in between. For example, I totally believe that they're directly related. That you can impose them as a condition of approval. In other words, you can say you've got to solve this problem because it relates to this other issue. I think we can do that today. I think that –

Brenda Pace: Do we?

George Read: I believe we do. But I then we could probably look at that link. I think that's a good one that when they are clearly related, that – I believe we do. You would have to hear examples of where we didn't, but I think that's one we could look at a little more.

The biggest one we use all of the time is the building code, which is already in there. You can't get a building permit until you get a land use permit. It's that simple.

Brenda Pace: Right. But you know, some of our conditions of approval are not things that get done and then they're finished. Some of them in the landscape maintenance zone, for instance, are things that go on for a long time. And that's different. I mean, the only time that you really have to come up – to resolve that problem that's very easy -- is when somebody comes in for to enlarge the house and one of those happens – you know – down at the river. I think they've taken out their landscaping. They got approval to add a room onto their house without anything. So, about the only time you can get to those long-term conditions of approval – not the ones that just end with the

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building permit or the ones that just end at the site plan approval, but the ones that go on for a long time, are when they come back in.

George Read: I believe you're right. I believe those are the ones I'm talking about because those are the ones that are related. For example, instead of allowing them to just sign the agreement they were going to do them, which we do. We record a conservation easement in most of those cases between the house and the river and says it will be maintained in perpetuity, and they will carry out their site plan. So those are third-party enforceable, but let's say that they did come in for another thing –

Brenda Pace: Just permitting of approval, yeah.

George Read: Yeah. The second time they could be required to put it in or bond it before they get the permit. I think those – I think we've had a lot better luck with those kind of connected conditions than the more obtuse ones. I think that's where you start getting foul of some legal issues. But this whole thing of not allowing somebody to apply or not allowing approval until something is fixed, I think it's a little bit of a difficult alternative to allow people –

Laurie Craghead: Basically he said most of everything I was going to say. I think it would be great if we could do this because, like you said, that's where we can get a hook, as long as someone can come in. But again, there would have to be some more research done on how we can get around the *Dolan* issues, which I actually was quoting *Nolan*, which sound alike. *Dolan* is actually the rough proportionality. So – and also how we can get around the ORS 215.416 provision, which is you have to apply what was – what is – in the laws at the time of their other application. We also have to get around the 197.522, which is that you have to prove it. If you can provide conditions of approval,

that will get them there and again get around the 150 days. And I think it's worth exploring. Kate Kimball has offered to help, and she's a fine lawyer. And so that if at some time in the future when there is time on the Work Plan to be able to put it in, it would probably be worth time exploring, but it's a matter of when there would be time to be able to get all of the research done on how we could possibly get around all of these others. But like George says, I do think that there is ways to tie it in now in terms of, like you said, adding onto a house if it's related to they didn't really put the house – they didn't finish something on the house that they were supposed to before. Well, then they don't have a legal house in the first place so, therefore, how can they do an expansion? So there might be able to be ways to, you know, tie it in like that. So, depending on – I would have to look at the criteria and see if that, you know, is one of the criteria that in order to be able to expand something, you have to be legal in the first place. The same thing with the extension of a non-conforming use. This has to be a legal nonconforming use which they haven't complied. But then again, like George said, if we let them get away with not putting their windows in for 20 years or whatever, then we can't go back further than that.

Everett Turner: This bill that's in the Legislature –

Laurie Craghead: It's actually – I was mistaken. It's for cities only right now. They were working on doing it for the 2004 legislature for counties.

Everett Turner: I see. Okay.

Tammy Sailors: Can you give some of those code section numbers?

Laurie Craghead: The statutes?

Tammy Sailors: Yeah.

Laura Craghead: 197.522, 215.416.

Tammy Sailors: And what is the one for the cities that is going through? Do you know that?

Laurie Craghead: It's Senate Bill 94 right now. What it does, it says that once you send an incomplete notice to the applicant, right now they have 180 days to respond. Then the clock starts back at the 30 days if they do respond anytime in there. So they could respond or pass the 150 days. But now it says that if they don't respond, then the application is void. So it gives a cutoff.

Tammy Sailors: That's not nice.

Laurie Craghead: Yeah. And the counties are planning on putting that in for counties in the year 2004.

Everett Turner: All right. Do you have a question?

Brenda Pace: Well.

Everett Turner: You have three choices today.

Brenda Pace: Pick one.

Everett Turner: On page four (inaudible).

Brenda Pace: Well, rather than let it sort of sink under the rug, I'd like to keep it on the agenda somehow and on the list of noncommitted projects, at least that. And if Kate can come up with something and you can talk to her –

Everett Turner: And this option, too.

Brenda Pace: --and some of these other things happen and maybe we will get there.

Peter Gramlich: I can appreciate that it would take some time to put it on the Work Plan as you were saying, but I was wondering if there isn't something you could do tonight to insert the simple language in the building permits division? I mean, there was some language I had suggested. You know, just simply all prior preconditions have been met. That's when we issue a building permit.

Tammy Sailors: We have that now?

George Read: We have that now.

Peter Gramlich: Well, there was a simple solution that he said was something we could do tonight.

George Read: Brenda has an example. Actually, I have seen some pictures that Brenda took of some –

Peter Gramlich: On the river?

George Read: -- the specially landscaped management combining zones violations along the river. Well, if you're in a landscape management zone and you apply for a new permit, it's clearly related to meet the original conditions of approval because we can require the same conditions over again because it's the same criteria. And I think we could do a better job on those of making sure that we look at those. I mean, those are in effect right now.

Brenda Pace: How about that? How about if we simply say that in the review there would be notice of any conditions that had not been fulfilled and those would be evaluated for their linkage?

George Read: You know, I think that you can make that motion tonight, and that would be a direction for the planners. And I think that we should be more careful. I think, the Olympics (??), as I saw it, and those were the ones we did permits on.

Brenda Pace: Yeah, and I don't know that either.

George Read: Yeah, they look like they could be older; but if they are, that could be a real problem. I mean, it's get the approval and cut down the trees along the river. You know, we do have a problem with that.

Peter Gramlich: So an individual evaluation of each case?

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Brenda Pace: Yeah, to say in the review whether there are conditions of approval that have not been met and whether or not there's any linkage to the current application.

Laurie Craghead: Well, it's really about an ongoing obligation because in the beginning they may have met it. So, in that box the condition that they've met is checked; but somehow there needs to be a way to link ongoing conditions somehow so that when they come into the Building Department for a building permit, that those are available because otherwise it's not going to kick it into consideration.

Brenda Pace: Well, I mean something like an addition to your house goes through the Planning Department as well.

George Read: It would be the Planning Department that would review those, but that's a reasonable request, especially when we have a land use permit and they're related. I don't know how good a job we are doing on that. You know, I keep seeing these river photos. I have been down there. I know there's – every time I get down I see a lot of violations or potential violations. So we actually have a B-list project to go down and inventory them, and we have an old aerial flight with a helicopter that went down the river about five years ago. We need to compare those things. So that's a project that we would be competing with in doing this.

Brenda Pace: Right, right, right.

George Read: You know, we go enforce the laws we have or do we do it perspective? So those are the kinds of things we need to look at.

Brenda Pace: Well, okay.

Everett Turner: Do you want to make a motion?

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Brenda Pace: This is a public hearing, is it not?

Laurie Craghead: No. Just a clarification that this just be direction to staff at this point --

Brenda Pace: Exactly.

Laurie Craghead: -- as opposed to any kind of wording in an ordinance since we still need to work on that.

George Read: No. The point I am making is that you receive -- one of your jobs prescribed is you usually receive our decisions, and you are our sounding board for how we're doing on our decisions. An issue is raised, and we may not be doing a good enough job at looking at those past conditions and making findings in our decisions to make sure that we're enforcing those. That's really what I'm saying you could probably do right now because that's something that -- that is a role you have that doesn't require an ordinance change. And I think that's something we could carry back to the planners and say "Yeah, that's a good idea. Do that."

Damian Syrnyk: But I also thought I heard that you wanted to also wanted to do two things. One was what George just described but also added to the noncommitted projects list?

George Read: We can sort priorities later. I mean, it will be another year. We just adopted our list.

Everett Turner: Sure, sure.

Damian Syrnyk: It sounded to me like you had short-term goals right now that we could take back to the planning staff plus a longer term goal of making sure we don't forget this by adding it to our list.

Brenda Pace: Yep, yep.

Tammy Sailors: Could we try to state clearly what it is that you want the staff to do.

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- Brenda Pace: Well that may be too big a – but I'll try. I'll try.
- Brenda Pace: I move that we request staff to evaluate any conditions of approval that were previously issued whenever they review a current application and evaluate in that application whether or not there's sufficient nexus with this application for it to require a denial – for it to be an additional condition of approval, I guess. Sorry I got messed up.
- George Read: Yeah, that'll work.
- Brenda Pace: Okay.
- Unidentified Fem: Are we going to put it all in one motion or how about putting it on the Work Plan?
- Everett Turner: And put it on the to do for the Work Plan.
- Brenda Pace: And put it on the Work Plan. All right.
- Everett Turner: Any discussion?
- George Read: To the list of noncommitted projects?
- Everett Turner: Yeah, right.
- George Read: I think that was well stated.
- Everett Turner: Is that a second?
- George Read: I second it.
- Everett Turner: Okay. All in favor?
- “Ayes.”
- Everett Turner: Carried.
- Brenda Pace: Thank you.
- Everett Turner: Thank you.
- Martha Leigh Kuhn: Mr. Turner, I do have a request. I realize it's part of the report and not public input, and so could you please address my question as we have received more

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information to submit in the future, and this would be a proper time for us to add on to what we've just found out to the Commission so that they have more information.

Everett Turner: Just give it to staff.

Martha Leigh Kuhn: Just give it to staff?

Everett Turner: Unhuh.

Martha Leigh Kuhn: Thank you.

Laurie Craghead: And just for the record, since she was not at a microphone, that was Martha Leigh Kuhn. I hope you don't mind me to put it on the microphone for you.

Martha Leigh Kuhn: That's fine.

Laurie Craghead: That she was going to submit some information regarding this request.

Everett Turner: Great. Thanks, .

Everett Turner: Okay.

Item No. IV – Work Session on Update of Bend Airport Master Plan.

TRANSCRIPTION STOPPED AT THIS POINT.

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William

From: "Liz Fancher" <liz@lizfancher.com>
To: "William John Kuhn" <William@RiskFactor.com>
Cc: "GERALD MARTIN" <franmarjerry@yahoo.com>
Sent: Wednesday 16 July 2003 2:06 PM
Subject: Re: Deliberations re Dowell Matter

Bill,

In my role as Multnomah County hearings officer, I recently decided a case where the code compliance requirement was enforced. The property owner was the City of Portland. As a condition of approval, I required the City to clean up an old landfill that exists on the property they plan to develop as a small fire station (for Forest Park and the surrounding area). If the County did not have their code enforcement provision, the landfill might well have remained on the property forever, in an area with steep slopes, fragile soils and stream drainage areas!

Requiring compliance at the time of land use approvals is really the easiest way to address code enforcement! Too bad that George Read does not see it the same way.

I am glad you spoke with Derrick Tokos. He is a excellent planner with a super high IQ -- lots of funs to work with!

Liz

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

From: William John Kuhn
To: Liz Fancher
Cc: Martin FranMarJerry
Sent: Wednesday, July 16, 2003 6:59 AM
Subject: Re: Deliberations re Dowell Matter

Liz,

Thank you for the information. I was about to ask you to get written confirmation of the status from CDD. I guess this satisfies.

FYI - George Read shot down the code enforcement proposal saying that he didn't think the County could enforce it. That he didn't want to enforce unrelated past bad acts. It looks like 1000 Friends is going to look into CDD's and Read's actions and inactions.

I have ordered a tape copy of the proceedings so it can be transcribed to show his unwillingness to do his job.

Please consider this as another example of the County not doing its job.

Catherine Morrow and Damian Syrnnyk were supposed to represent CDD at the meeting. Instead George Read and Laurie Craghead showed up. It felt like each of the four board members were "talked to" before the meeting by Read. (Peter Gramlich, Tamie Sailors, Brenda Pace, and Everett Turner, the chair)

For your information, I had spoken to a Dereck Tokus(sp?) in the Multnomah County Planning Division before the meeting. He said they had re-written their entire code in January 2001 and moved their Code compliance provision up to near the top of their priorities. That they had had no problems with enforcement, the 150 clock rule, or retroactivity.

We have been communicating closely with DesCo Sheriff's Office and getting respect.

Bill

37.0540

Commissioners. The Board of Commissioners decision is the County's final decision and is appealable to LUBA within 21 days of the signed Board order.

- (E) PC review's are legislative actions which involve the adoption or amendment of the County's land use regulations, comprehensive plan, map inventories and other policy documents that affect the entire County, large areas, or multiple properties. These applications involve the greatest amount of discretion and evaluation of subjective approval criteria, and must be referred by majority vote of the entire Planning Commission onto the Board for final action prior to adoption by the County. The Board of Commissioner's decision is the County's final decision and is appealable to LUBA within 21 days of the signed Board order or ordinance as applicable.

37.0540 Assignment of decision makers.

The following County entity or official shall decide the following types of applications:

- (A) Type I Decisions. The Planning Director shall render all Type I decisions. The Planning Director's decision is the County's final decision on a Type I application.
- (B) Type II Decisions. The Planning Director shall render the initial decision on all Type II permit applications. The Planning Director's decision is the County's final decision unless appealed to the Hearings Officer. The Hearing Officer decision on such an appeal is the County's final decision on a Type II application and is appealable to the Land Use Board of Appeals.
- (C) Type III Decisions. The Hearings Officer shall render all Type III decisions. The Hearings Officer decision is the County's final decision on a Type III application and is appealable to the Land Use Board of Appeals.
- (D) Type IV Decisions. The Planning Commission shall render the initial decision on all Type IV permit applications. If the Planning Commission denies the Type IV application, that decision is final unless appealed to the Board of Commissioners in accordance with

MCC 37.0640. If the Planning Commission recommends approval of the application, that recommendation is forwarded to the Board of Commissioners. The Board's decision is the County's final decision on a Type IV application and is appealable to the Land Use Board of Appeals.

- (E) PC Actions. The Planning Commission shall review all PC actions. If the Planning Commission adopts by majority vote of the entire Planning Commission a resolution to recommend an action, the Planning Commission refers the resolution to the Board for final action. The Board's decision is the County's final decision on a PC application and is appealable to the Land Use Board of Appeals.

37.0550 Initiation of action.

Except as provided in MCC 37.0760, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser. PC (legislative) actions may only be initiated by the Board of Commissioners, Planning Commission, or Planning Director.

37.0560 Code compliance and applications.

The County shall not approve any application for a permit or other approval, including building permit applications, for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County. A permit or other approval, including building permit applications, may be authorized if it results in the parcel coming into full compliance with all applicable provisions of the Multnomah County Code.

37.0570 Pre-application conference meeting.

- (A) Prior to submitting an application for a Type II, Type III or Type IV application, the applicant shall schedule and attend a pre-application conference with County staff to discuss the proposal. The pre-application conference shall follow the procedure set forth by the Planning Director and may include a filing fee, notice to neighbors, neighborhood organizations, and other organizations and agencies.

July 10, 2003

Deschutes County Planning Commission
117 NW Lafayette
Bend, OR 97701

Re: Enforcement Code Amendment Request

Dear Commissioners:

On behalf of 1000 Friends of Oregon, I offer the following comments on the request for a code amendment by William and Leigh Kuhn. I have reviewed their request and the memorandum prepared by Damian Syrnyk.

As you know, enforcement is essential to assuring fairness and effectiveness of Oregon's unique land use system. The proposal by the Kuhn's embraces an important enforcement element: the county should issue no new land use approvals or permits without first making sure the applicant is in compliance with existing requirements. The Deschutes County Code Enforcement Manual cited in the memorandum clarifies that the county has the authority to implement this policy.

I strongly agree with the staff conclusion that "the Kuhns' have raised a legitimate issue related to improving code enforcement in the county" and hope that you will support continued action on this issue. If there is any way in which I can be of assistance in this endeavor, I would be pleased to do so.

Thank you for your consideration of these views.

Sincerely,

Kate Kimball

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William

From: "Kate Kimball" <kate@friends.org>
To: "William John Kuhn" <William@riskfactor.com>
Cc: "Phil Philiben" <philphil@bendcable.com>; "Ron Caramella" <rcaramel@redmond.k12.or.us>; "Bill Boyer" <wboyer@dsicomputers.com>; "FoDeCo - Boyer Jeff" <localfavs@bendcable.com>
Sent: Monday 14 July 2003 12:12 PM
Subject: Re: George Read shoots down code enforcement

Bill:

I spoke with Jeff this morning and called George Read today to get a better sense of where he is coming from. I wanted to share this before tomorrow's meeting at 11:30 at COEC so we're all working from the same information base:

George says that he supports the concept you and Leigh put forward. He has some concerns about specific impacts, but agrees that it is a good idea. He said that the Planning Commission did put the item on their discretionary list for this year as staff recommended. Their fiscal year starts July 1, so they just adopted their work plan. The Planning Commission did not vote to replace an existing 'A' list item with your idea, but did put it on their 'B' list, so it's still alive.

His concerns, as I understood them, are as listed below. FYI, I agree that these are legitimate concerns. I also think there are solutions to all of them. My guess is Read would agree that there are solutions, but that it takes time to develop them -- which is why this is a work task and not just a quick adoption of your proposal.

-- The county needs be sure there is a legitimate violation. They would need a code enforcement case. I like this because I'd want assurance that they wouldn't harass some people by refusing to take their application, claiming there's an enforcement issue.

-- Read had concerns about not accepting an application because under law it's deemed complete for them in 30 days, which starts the 150 day clock. As you know, if they don't finish up in 150 days, the applicant gets a mandamus action which is pretty much an automatic approval from the Circuit Court.

-- Laurie Craighead used to work for Multnomah county and said there are questions there about whether the county has the authority to enforce unrelated compliance issues on a pending application. (This might be the Nolan nexus requirement?)

-- He wants to retain some enforcement discretion so that he's not forced to make bad law. An example is Greenacres, which is permitted as a campsite but morphed into an RV park. The Circuit Court said this non-conforming use was legal, so the county lost and now has a bad decision on the books for this land. Enforcement discretion is not at risk here in my opinion, and I think the county should have it this kind of discretion is what smart enforcement is about.

Read did agree that they could be doing a better job of compliance and asked the Planning Commission to direct the planning staff to look at compliance issues when writing decisions. The Planning Commission did so direct the planning staff last week.

After speaking with Jeff briefly, I agree with his suggestion (forgive me

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07/14/2003

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Jeff if I distort what you said) that FODC decide on its enforcement priorities and then talk to Read. For example, I would like to know what the county's enforcement priorities are, whether those those priorities are being reflected in enforcement actions, whether/how those priorities match FODC's and, if there is a difference, how the county can make FODC's enforcement priorities their own. I'd also like some history on county enforcement ask the county to generate some numbers, which I bet they can.

To start the ball on priorities, here are some suggestions:

1. Protect deer winter range. Protection means looking at this area as a whole: how many land divisions, how many non-resource dwellings, etc. have occurred over the last 5, 10, and 20 years?
2. Protect resource areas (irrigated EFU or forest lands) that have larger parcel sizes from further land divisions.
3. Prevent rural sprawl by spreading of rural residential patterns or zones.
4. Ask the county for data: Track parcel sizes in forest and EFU zones over time, number of parcels and number of dwellings in these zones. (Maybe ask the county to generate this data?)

Maybe a general question is: does the county have any priority areas that it chooses to protect? For example, in Crook County, their EFU-1 is the area that they protect above others. In Jefferson County, it's their EFU-A1. In both cases it's their most valuable agricultural land. Deschutes County may assume that federal land is their protection and not have such a priority.

Kate

Kate Kimball
Central Oregon Planning Advocate
1000 Friends of Oregon
P.O. Box 8813
Bend, OR 97708

Ph. 541-382-7557
Fax 541-382-7552

Be a Friend: Join 1000 Friends of Oregon online at: www.friends.org/support

Confidentiality Notice: This e-mail message may contain confidential and privileged information. If you have received this message by mistake, please notify us immediately by replying to this message or telephoning us, and do not review, disclose, copy, or distribute it. Thank you.

On 7/11/03 8:50 AM, "William John Kuhn" <William@RiskFactor.com> wrote:

- > Kate,
- >
- > At the Planning Commission meeting last night George Read shot down the code
- > enforcement proposal saying that he didn't think the County could enforce it.
- > That he didn't want to enforce unrelated past bad acts.
- >
- > I have ordered a tape copy of the proceedings so it can be transcribed to show
- > his unwillingness to do his job.
- >
- > Please consider this as another example of the County not protecting wildlife.

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- >
- > Catherine Morrow and Damian Syrnyk were supposed to represent CDD at the
- > meeting. Instead George Read showed up. This man needs to be told to do his
- > job. What ideas do you have to force the issue? It felt like each of the four
- > board members were "talked to" before the meeting by Read. (Peter Gramlich,
- > Tamie Sailors, Brenda Pace, and Everett Turner, the chair)
- >
- > Is it possible to get from 1000 Friends a listing of names, addresses,
- > position titles, and email addresses of all heads of community development
- > departments from each county in Oregon? We would like to take a pole of all
- > counties to see if they have such an ordinance, if they do, have they had any
- > difficulty enforcing it, and what has been the general results of the
- > ordinance.
- >
- > For your information, I had spoken to a Dereck Tokus(sp?) in the Multnomah
- > County Planning Division yesterday. He said they had re-written their entire
- > code in January 2001 and moved their Code compliance provision up to near the
- > top of their priorities. That they had had no problems with enforcement, the
- > 150 clock rule, or retroactivity.
- >
- > Leigh and I hope that you and FoDesCo understand the significance of the
- > George Read impediment to good and fair land use enforcement in Deschutes
- > County.
- >
- > Bill
- > 389 3676

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07/14/2003

**Kuhn
vs
Deschutes County Assessor Scot Langton**

MD-150093D Ex# 32 ~Pgs# 9

**19970203 Dowell response to Kuhns
19970119 Homeowners Association
Agreement Proposal .pdf**

2 - 3 November 2015

19970203 Dowell response to Kuhns 19970119 Homeowners Association Agreement Proposal .pdf

FAX DOCUMENT

2/3/97 12:30pm

TO: Bill and Leigh Kuhn

4 pages

FROM: Jeff and Pat Dowell

Bill and Leigh,

As promised, we're getting back to you with our feedback and thoughts regarding your proposed Joint Property Maintenance Agreement.

Let me preface our response by simply stating the 'disclaimer' that though we are providing feedback on them, I may question the need for one given the absence of any such agreement through the history of the sales of the properties. Having said that, I'm not trying to start things off on a negative note at all, but rather, just raise the question.

Pat and I have talked at great length about our feelings on your proposed Agreement. To a large extent we agree with almost all of them. For the purposes of clarification, I'll respond to each of the points you propose.

Heading It's proposed that the agreement apply to all 3 lots (100, 200, 300), unless otherwise noted. Unless I misread things, the Joint Property Maintenance Agreement called for in CU-80-22 is to apply only to the property held in common, not the privately owned lots. Thus, the heading needs to be changed to reflect only lot 300.

1) Description of parcels needs to only refer to lot #300

1a) Remove "any of the lots" and substitute "the jointly held property". Delete 2nd sentence.

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19970203 Dowell response to Kuhns 19970119 Homeowners Association Agreement Proposal .pdf

1b) OK

1c) OK

2a) OK

2b) Please add to end of sentence "and must be agreed to in writing by both parties"

2c) If fence is vegetation, we feel only upper 42" limitation is necessary

2d) OK

2e) OK

2f) OK

3a) We feel we need additional clarification here, as we have no direct experience with the shared property and would want to ensure that we would have acceptable access to explore the majority of the joint property while at the same time adhering to agreed upon 'trails' guidelines.

3b) Our proposed rewrite of 3b and 3b1 is: "We will demonstrate reasonable sensitivity to the needs of the wildlife, soil and plants present on the joint property, and adjust our activities accordingly. Things such as horseback riding across the joint property and walking across the joint property from [insert date #1 to insert date#2] unless necessary, as specifically prohibited.

3c) OK

3d) OK

4) We feel one warning is appropriate, then the tenant faces eviction.

5) OK

6) There are two parts to this answer: One) This is not applicable to the document, as there are no utilities costs associated with the joint help property. Two) We have talked with Dan Dingman of Central Electric Co-Op and verified that we are not in default of any agreement that requires us to share line

extension costs, per your contention. He confirmed that he had never heard of any such cluster development requirement, though he did say we should confirm his position with the County Planning Department. We then met with an individual at the County Planning Department and asked for any related documentation or guidelines/requirements for cluster developments as it related to shared line extensions or basic utility costs. Nothing was found on file that they felt could be interpreted in that manner. We were also given a copy of the current cluster development guidelines and were shown that there was nothing in them that applied to this situation as well.

7 & 8) Are this missing from our document? You jump from #6 to #9. Please advise.

We don't understand the need to put the sentence you have just before item #9: "All parties shall abide by all county ordinances", as it is already stated in 1a above.

In that same paragraph, we agree that the cost of 'finalization' of this document shall be borne by both parties equally, but we want to add that a firm quote from a mutually agreed to attorney must first be obtained and approved.

9) Does not apply as this agreement is for the joint property only.

10) We believe this is something that does need to be addressed relative to the joint property, but the wording is going to be very challenging to come up with. As a possible alternative, (albeit a long shot) of having to deal with any of this stuff in the future would be to propose (for discussion purposes only) that Kuhn and Dowell approach the County with a plan to divide the property into 2 equal 20 acre parcels, thus doing away with the whole issue a joint property maintenance agreement. Generally speaking, our thoughts would be to keep the existing 4.3 acre private parcels as currently defined in terms of lot lines, with the resulting 'split' of the 34.4 being designated as having similar restrictions as we are all proposing above. honestly, have not idea if this can even be done, or you'd want to, but it

02/03/1997 14:12

5413828924

TM DOWELL

PAGE 01

it was done with the Barton/Cibelli 40 acre parcel immediately to our West some years ago, so it must not be impossible.

The only paragraph that matters is this one - Dowells want dogs

**** Please note that the Joint Owners Property Maintenance Agreement will be signed by us only when Kuhns and Dowells have agreed on the interpretations surrounding current land use restrictions on the private 4.3 acre parcels. Specifically, that Dowells will agree not to allow any future tenants of their property to have dogs, but that Dowells will be allowed to have dogs when they occupy the property so long as they do not access the joint property and are not allowed to roam.**

Bill and Leigh, we will call you tonight to talk with about our positions and see where we go from here. Our apologies for not being able to come out and sit down in person to go over this, but our meetings this morning took much longer than anticipated and I (Jeff) have to get back to Portland for a 4:00pm meeting.

I hope we've made some major progress in our negotiations with our concessions on the renters with dogs situation and the dual residency on the property issue. Hopefully that lays the groundwork for future discussions which will eliminate our differences and concerns.

I look forward to speaking with you this evening.

Jeff Dowell

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Question: validity of this agreement, note & section 1.7.

Home-owners Maintenance Agreement

10/1/97
to first lot 300
120 20 split

version Saturday, February 1, 1997 9:34 AM

Regarding 16 11 19 - Lots ~~100, 200~~, and Joint lot 300, between:

Jeff & Pat Dowell
owners of 65595 Sisemore Road building site
10705 NE 38th Avenue
Vancouver, WA 98686
h 360 574 7118
wj 503 241 9315

William John & Martha Leigh Kuhn
owners of 65575 Sisemore Road home site
Post Office Box 5996
Bend, Oregon 97708-5996
h 541 389 3676
w 541 389 3676

19970203 Dowell response to Kuhns 19970119 Homeowners Association Agreement Proposal .pdf

Description of Each individual parcel is here.

Lot #100 shall refer to the Dowell's building site. Lot #200 shall refer to the Kuhn's building site. Lot #300 shall refer to the joint common property (estimated to be 34.4 acres) owned ½ interest by the Dowell's and owned ½ interest by the Kuhn's. This Home-owners Maintenance Agreement shall refer to ~~all three Lot~~ ^{only} ~~in their entirety~~ ^{# 300} except where specifically noted.

1) To preserve and enhance the open space we agree that:

a) Neither party shall place or allow the placement of any structure or improvement upon any of the lots that is not specifically allowable under appropriate Deschutes County zoning ordinance. ~~That on Lot #300, the 34.4 acres of common property,~~ no structure or improvement shall be allowed unless it is agreed upon in writing by both parties.

✓ b) Any fencing (excluding the existing broken wood fence on the Sisemore Road property line) either around the periphery boundary or within the boundary will have to conform to item 2) c) below and prior to any construction must be agreed upon in writing by both parties with expenses to be negotiated.

✓ c) Any introduced ponds, streams, plantings, or forestation of the joint property must be agreed upon by both parties prior to implementation and expenses to be negotiated.

2) To preserve and protect existing wildlife: *applies to 100 200 300 120 20*

a) Owners, tenants, family members, and guests may not operate "dirt bikes", ATVs, or other motorized vehicles on the property (excluding Moonshine Ridge Road). ??

✓ (needs further clarification: satellite dish) b) All telephone, electrical, and any future as yet unknown or undetermined "utility" lines must be underground.

○ (as written) c) All fencing must be of wood or simulated wood made of recycled plastic or other natural material and not metal. The top rail may not be higher than 42" and bottom rail may not be lower than 18". No barbed wire or straight wire may be used for fencing. (If fencing is of vegetation would the 18" minimum / 42" maximum apply?) *May only*

Home-owners Maintenance Agreement

version Saturday, February 1, 1997 9:34 AM

+ d) Owners, tenants, family members, and guests may not take "target" practice with rifle or gun on property, or hunt with any device.

+ e) Owners, tenants, family members, and guests may not allow dogs on the joint property.

+ f) Owners tenants, family members, and guests may not use the joint property for livestock purposes (ie. grazing). Livestock is defined here as: horses, cattle, llamas, sheep, emus, ostriches, pigs, chickens, "game" birds.

- 3) To maintain all species at optimum levels to prevent serious depletion of indigenous species and to preserve bio-diversity we agree that:

a) No new trails will be established by owners, family members, and guests on Lot #300 the joint property.

b) We will demonstrate sensitivity to the needs of the wildlife, soil, and plants present or using Lot #300 the joint property, and adjusting our activities accordingly.

3) b) is too weak or too vague as is.

Agree it's too weak

c) This would include avoiding riding on horseback (except on Moonshine Ridge Road) across the property, avoiding walking across property during early spring into mid summer unless necessary, walking on existing animal trails when possible on Lot #300 the joint property. (Note: There are many trails and roadways going in all directions nearby - it is not necessary to cross the joint acres to go anywhere.)

+ c) There will be no dumping of any waste material on Lot #300 the joint property.

+ d) No pesticides or fertilizers will be applied unless both parties agree in writing prior to implementation on Lot #300 the joint property.

+ 4) Tenants will not access the joint property unless both owners agree in writing and said tenant understands all restrictions and signs an agreement to abide by all restrictions. If tenant does not adhere to all restrictions this would be probable cause for eviction by owner.

+ 5) To insure that annual property taxes are paid on the joint property, Lot 300: Both parties are responsible for and shall pay their portion of taxes on the jointly owned lot. No taxes shall be considered paid on the individually owned building lot until that party's 1/2 portion of the jointly owned Lot 300 is paid in full. (This needs to include a statement about the discount the county gives if paid by the 15th.)

+ 6) Regarding improvements that benefit both parties: Any and all expenses for improvements, such as electrical power and telephone line extensions, that benefit both parties shall be

negotiated between the parties. Since the Dowell's are already benefiting from the electrical and phone line extensions that were paid for in their entirety by the Kuhn's, the Dowell's

agree to pay the Kuhn's \$22,225.58 (as of 970131) which is their portion of the extension costs.

① shared cost at time work was done ② no interest & taxation minus respective of pockets. payable over time

Home-owners Maintenance Agreement

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✓ to be discussed

All parties shall abide by all county ordinances. It is agreed that the legal expenses regarding this document shall be equally shared by both parties. *mutually acceptable lawyer*

- 9) Since according to Deschutes County Ordinance #92-040, Exhibit "A" under Policies: #2 "The county shall enforce an animal control ordinance which prohibits dogs to be at large or not under the complete control of a capable person" and since one would be unable to construct a kennel that would contain a dog given the fencing restrictions contained in the deed restrictions, the "dog door" on the Dowell's garage will be removed.

not
up
possible
person

- + 10) Establish some means of dealing with disputes such as what we have just experienced.

Signatures here

Jeff Dowell (Owner lot #100)

Date

Patti Dowell (Owner lot #100)

Date

Martha Leigh Kuhn (Owner lot #200)

Date

William John Kuhn (Owner lot #200)

Date

19970203 Dowell response to Kuhns 19970119 Homeowners Association Agreement Proposal .pdf

11/19

✓ 6

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+ 10

55%

0 3

~~12%~~
12%

MD-150093D Ex# 32 Pg# 7

FAX DOCUMENT

2/3/97 12:30pm

TO: Bill and Leigh Kuhn
FROM: Jeff and Pat Dowell

4 pages

Bill and Leigh,

As promised, we're getting back to you with our feedback and thoughts regarding your proposed Joint Property Maintenance Agreement.

Let me preface our response by simply stating the 'disclaimer' that though we are providing feedback on them, I may question the need for one given the absence of any such agreement through the history of the sales of the properties. Having said that, I'm not trying to start things off on a negative note at all, but rather, just raise the question.

Pat and I have talked at great length about our feelings on your proposed Agreement. To a large extent we agree with almost all of them. For the purposes of clarification, I'll respond to each of the points you propose.

Heading It's proposed that the agreement apply to all 3 lots (100, 200, 300), unless otherwise noted. Unless I misread things, the Joint Property Maintenance Agreement called for in CU-80-22 is to apply only to the property held in common, not the privately owned lots. Thus, the heading needs to be changed to reflect only lot 300.

1) Description of parcels needs to only refer to lot #300

1a) Remove "any of the lots" and substitute "the jointly held property".
Delete 2nd sentence.

1b) OK

1c) OK

2a) OK

2b) Please add to end of sentence "and must be agreed to in writing by both parties"

2c) If fence is vegetation, we feel only upper 42" limitation is necessary

2d) OK

2e) OK

2f) OK

3a) We feel we need additional clarification here, as we have no direct experience with the shared property and would want to ensure that we would have acceptable access to explore the majority of the joint property while at the same time adhering to agreed upon 'trails' guidelines.

3b) Our proposed rewrite of 3b and 3b1 is: "We will demonstrate reasonable sensitivity to the needs of the wildlife, soil and plants present on the joint property, and adjust our activities accordingly. Things such as horseback riding across the joint property and walking across the joint property from [insert date #1 to insert date#2] unless necessary, as specifically prohibited.

MD-150093D Ex# 32 Pg# 8

19970203

as they do not access the joint property and are not allowed to roam.

Bill and Leigh, we will call you tonight to talk with about our positions and see where we go from here. Our apologies for not being able to come out and sit down in person to go over this, but our meetings this morning took much longer than anticipated and I (Jeff) have to get back to Portland for a 4:00pm meeting.

I hope we've made some major progress in our negotiations with our concessions on the renters with dogs situation and the dual residency on the property issue. Hopefully that lays the groundwork for future discussions which will eliminate our differences and concerns.

I look forward to speaking with you this evening.

Jeff Dowell

**Kuhn
vs
Deschutes County Assessor Scot Langton**

MD-150093D Ex# 33 ~Pgs# 3

**19990426 Kuhn to Dowell two
additional proposals highlight**

2 - 3 November 2015

Main Identity

MD-150093D Ex# 33 Pg# 1

From: "William John Kuhn" <William@RiskFactor.com>
To: "Dowell Pat" <pjd@transport.com>; "Dowell Jeff" <jeffdowell@transport.com>
Sent: Monday, April 26, 1999 7:20 AM
Subject: two additional proposals

It's partly cloudy and heavy frost this morning.

The enclosed is a copy of my letter mailed yesterday outlining two additional proposals to put on the table for discussion. Bill

Sunday 25 April 1999

*Pat and Jeff Dowell h 360-574-7118
10705 NE 38th Av
Vancouver, WA 98686*

Dear Pat and Jeff,

Please forgive my tardy response from November to your request for dialog regarding the Codes Covenants and Restrictions relative to dog ownership. I admit to being swamped every yearend through tax day, but this year I kept running over in my head different scenarios that might work for all of us.

We have appreciated your communications and articles regarding Ben, and basically respect your desire for an inside animal that doesn't run wild, but what if your desires change in the future? We understand that you detest a yapping uncontrolled mutt. But how do we protect our rights if in fact that isn't the way it turns out?

The barrier I kept running into is how there can be dogs here while at the same time respect our rights to enjoy the various wild animals that we signed a deed restriction to protect.

The proposal suggested by you in November would seem like a reasonable solution if combined with a more restrictive signed agreement stating that no other owner, or renter, etc., ever be able to have a dog on any of these deed restricted acres. That if anyone other than Jeff or Pat Dowell, the current owners, were to bring or have a dog there would be severe automatic cash penalty. However, when dealing with the 'what ifs' of such an agreement would it put Leigh and me back in the position of being the ugly neighbor? Were we to agree to such a solution we would have to have some kind of iron clad agreement how to deal with all of the various possibilities that might arise. For example,

What if a dog got loose?

Who is responsible for getting the dog back?

What are the penalties for a dog getting loose?

What happens when Ben dies?

What if we didn't like the dog(s) that replaced him?

What if it was a yappy dog(s)?

Would we have a say in the kind of dog(s) that would replace Ben?

What if you were out walking with one of your dogs and it got loose?

What if it got loose more than once, repeatedly chasing various animals?

How many dogs would we be agreeing to?

What if you were to build a kennel and kept the dog(s) outdoors?

What if your dog marks etc. on our property?

What if you boarded dogs?

What if you use the dog door and the dog is unrestrained and unmonitored?

How do we enforce our rights?

We don't want to be put in the position of having to be the enforcer, nor do we have any desire to monitor your dog's activities. Do you still have a desire to pursue this proposal?

Even now we are being cast in an unfair light. Lisa Chitwood and a friend attended a performance that Adam, one of my employees, was performing in a couple of months ago. Adam recognized Lisa and said hi to her. When Lisa introduced Adam to her friend she introduced Adam as an employee of her neighbors' saying, "You know, the neighbors that hate dogs." I have since relayed to Lisa some of our stories of saving dogs that were destined for the gas chamber. How we have spent money and time searching, sometimes for months, to find good loving homes for dogs that were abandoned, passing up our desire to keep them as companions.

Your November communication mentioned, "This is not the environment we dreamed of coming to, as we see it running contrary to the very essence of freedom and openness that the area represents to us." I appreciate your desire for freedom and openness, at the same time you chose to buy your property with the full knowledge of the deed restrictions, and the reasons for them, that we so carefully and meticulously pointed out before you bought. Where do our rights fit in the picture you have drawn of the area? Where do the needs (re: Oregon Fish and Wildlife) of the Tumalo Wildlife area you want to live in fit in the picture you have drawn of the area?

I will be out of town a good part of mid-May. In the meantime I would like to suggest two counter proposals to be discussed.

Our first proposal references point number one of the Covenants and Restrictions of the Land Use Restrictions (a.k.a. deed restrictions) which says: "Owners or family members may not acquire additional dogs other than the dog(s) they may own when they purchase the property." We propose that it would include any dog(s) that you currently own as of this date (Sunday 25 April 1999). No additional, subsequent, substitute, or replacement dog(s) would be permitted under this proposal. When Ben dies (and if there is another dog that has not been mentioned that you currently own) that would be it. Even if there is agreement with this proposal, we still need to work out some of the 'what ifs' mentioned earlier in this letter. We would like to discuss and include some flexibility with situations that may occur such as visitors and family members that may want or need to live with either of our households that have dogs as companions before the day they move in or visit.

Our second proposal: You consider selling us your property. A couple of people we have talked to about our situation and even a few of my clients have offered to buy your property. They are willing to live with the deed restrictions and honor them as they were intended. One is even willing to restore the property to its wild state and deed the property as a wildlife refuge.

IT IS our desire to move our discussion forward. At the same time I would like for you to consider the following: Assume for a moment that you had bought first. We were interested in buying the second parcel. You told us about the deed restrictions and we looked at them and saw that although they did restrict 'dirt-bikes', they did not restrict all terrain vehicles (ATV's). When we show up with ATV's and start running them on our property and on the road, how would you feel about the noise, the pollution, and the destruction they caused? How would you deal with us? Would you compromise?

Sincerely,

William John Kuhn

Kuhn
vs
Deschutes County Assessor Scot Langton

MD-150093D Ex# 34 ~Pgs# 1

**19990627_Dowells Will Not Pursue
Further INTENT**

2 - 3 November 2015

Main Identity

From: "Pat Dowell" <pjd@mail.transport.com>
To: <william@riskfactor.com>
Sent: Monday, June 28, 1999 9:15 AM
Subject: Dowell response

Bill, Leigh,

We believe we have presented you with a very reasonable plan for going forward. A plan which gives us all the best likelihood for a peaceful co-existence. You obviously feel that our "best efforts" will simply not be enough to satisfy you, and have created a long list of "what ifs" in support of your position. After reading and rereading your response to us, we came away with the feeling that you (unfortunately) appear to be looking for problems rather than solutions.

You have your perspectives on the world, and we have ours - and they are obviously very different. But this situation all comes down to something very simple: No piece of paper, from a signed agreement all the way to a court order, is going to protect either party from the havoc the other could wreak, if so desired. We're offering you our best efforts, which, if respected and reciprocated, is the optimal situation you could possibly ask for from a neighbor (be it us, or anyone else) - and it's more "protection" than any piece of paper could give either of us.

We've given this situation a lot of thought, and quite honestly, based on the positions you've taken and the perspectives you've presented, we don't feel there is anything to be gained by pursuing this matter further.

Jeff and Pat

Over the next several years the Dowells made good on their threat of wreaking havoc by refusing to join us in pursuing a joint DR, giving false testimony in civil court, verbal threats "one match and...", allowing their general contractor/property manager to break into our home and assault us, putting flashing Christmas trees lights on their roof, directing their renter/tenant to leave the eight outdoor flood lights on 24/7 for over 2 years, threatening to sell their property to the general contractor who assaulted us, allowing other renter/tenants to bring dogs to the cluster, ignoring simple maintenance such as removing weeds, allowing a renter/tenant to bring mattresses, yard waste, and building demolition to the property and then setting huge bon-fires ablaze without adequate means to put the fires out, and allowing transients to use their structure.