



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of 1/27/16

Please see directions for completing this document on the next page.

DATE: January 11, 2016

FROM: Will Groves Community Development Department 388-6518

TITLE OF AGENDA ITEM:

A de novo hearing on Kine & Kine Properties appeal of a Hearings Officer's decision (File Nos. 247-14-000395-TP, 396-SP, 397-LM and 247-15-000206-A) to establish a nine-lot, zero-lot-line subdivision as well as site plan and Landscape Management (LM) review for dwellings on the proposed subdivision lots on property in Widgi Creek zoned Resort Community (RC).

PUBLIC HEARING ON THIS DATE? Yes

BACKGROUND AND POLICY IMPLICATIONS:

The applicant, Kine & Kine Properties, requested approval of a nine-lot, zero-lot-line subdivision called "The Refuge at Widgi Creek," as well as site plan and Landscape Management (LM) review for dwellings on the proposed subdivision lots, on property in Widgi Creek zoned Resort Community (RC) and LM and located between Seventh Mountain Drive and the first fairway of the Widgi Creek Golf Course.

The Hearings Officer issued a decision on April 6, 2015 finding that the proposal does not comply with all applicable regulations. On April 17, 2015 Kine & Kine Properties appealed the decision to the BOCC.

The applicant has agreed to toll the 150 day deadline within which the County has to issue a decision in this matter until March 1, 2016.

FISCAL IMPLICATIONS:

None

RECOMMENDATION & ACTION REQUESTED:

Staff recommends that the Board open the public hearing and receive testimony.

ATTENDANCE: Will Groves

DISTRIBUTION OF DOCUMENTS:

CDD, Legal



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005
(541)388-6575 FAX (541)385-1764
<http://www.co.deschutes.or.us/cdd/>

MEMORANDUM

DATE: January 11, 2016

TO: Board of County Commissioners

FROM: Will Groves, Senior Planner

RE: De novo hearing on Kine & Kine Properties appeal of a Hearings Officer's decision. File Nos. 247-14-000395-TP, 247-14000396-SP, and 247-14-000397-LM (247-15-000206-A)

Before the Board of County Commissioners (BOCC) is an appeal filed by Kine & Kine Properties. The appeal is submitted in response to a Deschutes County Hearings Officer's decision that a proposed subdivision does not comply with all applicable regulations. The BOCC agreed to hear this matter under Order 2015-029. A de novo public hearing is scheduled for January 27, 2016.

BACKGROUND

The applicant, Kine & Kine Properties, requested approval of a nine-lot, zero-lot-line subdivision called "The Refuge at Widgi Creek," as well as site plan and Landscape Management (LM) review for dwellings on the proposed subdivision lots, on property in Widgi Creek zoned Resort Community (RC) and LM and located between Seventh Mountain Drive and the first fairway of the Widgi Creek Golf Course.

The Hearings Officer issued a decision on April 6, 2015 finding that the proposal does not comply with all applicable regulations. On April 17, 2015 Kine & Kine Properties appealed the decision to the BOCC. The BOCC agreed to hear this matter under Order 2015-029.

The applicant has agreed to toll the 150-day deadline within which the County has to issue a decision in this matter until March 1, 2016.

APPEAL

The notice of appeal describes several assignment of error. These are summarized below, with references to those pages within the decision where the Hearings Officer addressed the issue.

- (a)** The Hearings Officer erred when she concluded Comprehensive Plan Policy 4.8.2 applies to the subject property and requires it to remain as a golf course or be developed for open space or recreation uses. H.O. Decision, p. 23-28.
- (b)** The Hearings Officer erred when she used the "physically developed" exception process as a basis to conclude the BOCC intended to limit future development at Widgi Creek to all but 14 acres. H.O. Decision, p. 12, 26-28.
- (c)** The Hearings Officer erred when she concluded Comprehensive Plan Policy 4.8.2. was intended to maintain the status quo at Widgi Creek as of 2001. H.O. Decision, p. 24.
- (d)** The Hearings Officer erred when she concluded the subject property was "developed" as a golf course. H.O. Decision, p. 25-28. 1. The version of the H.O. Decision received by Appellant did not contain page numbers. Therefore, for purposes of specificity, the Appellant numbered the pages, attached the Decision hereto and refers to those page numbers to identify the issues on appeal in the assignments of error.
- (e)** The Hearings Officer erred when she concluded the configuration of the driveways for Lots 8 and 9 did not create a safe environment within the meaning of DCC 18.124.060C. H.O. Decision, p. 45.
- (f)** The Hearings Officer erred when she concluded the configuration of Lots 8 and 9 will create safety hazards and therefore not be harmonious within the meaning of DCC 18.124.060E. H.O. Decision, p. 46.
- (g)** The Hearings Officer erred when she concluded the proposed subdivision and residential development will not be consistent with the land use patterns of the area. H.O. Decision, p. 55.
- (h)** The Hearings Officer's decision violates Article I, Section 18 of the Oregon Constitution and the Fifth Amendment of the U.S. Constitution by interpreting the County Code in a way that results in a taking of private property for public use by requiring the private property owner to devote his property to golf course or community use for the benefit of the community.

Attachments

1. Hearing Officer's decision
2. Notice of Intent to Appeal

**IN A MATTER BEFORE
THE DESCHUTES COUNTY BOARD OF COMMISSIONERS**

KINE AND KINE PROPERTIES,)	NOTICE OF APPEAL -
)	File Numbers 247-14-000395-TP,
Applicant/Appellant.)	247-14-000396-SP, 247-14-000397-LM –
)	Decision of Deschutes County
)	Hearings Officer
)	

1. DCC 22.32.010 Who May Appeal.

Appellant Kine and Kine Properties was the applicant below, a party to the proceedings and is entitled to appeal under DCC 22.32.010(A)(1).

2. DCC 22.32.015 Filing Appeals.

Appellant Kine and Kine Properties submits the attached Notice of Appeal form, the appeal fee and the following statement of issues on appeal.

3. DCC 22.32.020 Notice of Appeal.

The present Notice of Appeal includes the following statement of issues relied upon for appeal, a request for de novo review and the reasons why the Board should review the Hearings Officer's decision and why it should do so de novo for the issues on appeal.

4. Issues on Appeal.

The Hearings Officer's decision is in error in the following ways:

(a) The Hearings Officer erred when she concluded Comprehensive Plan Policy 4.8.2 applies to the subject property and requires it to remain as golf course or be developed for open space or recreation uses. H.O. Decision, p. 23-28.¹

(b) The Hearings Officer erred when she used the "physically developed" exception process as a basis to conclude the Board intended to limit future development at Widgi Creek to all but 14 acres. H.O. Decision, p. 12, 26-28.

(c) The Hearings Officer erred when she concluded Comprehensive Plan Policy 4.8.2. was intended to maintain the status quo at Widgi Creek as of 2001. H.O. Decision, p. 24.

(d) The Hearings Officer erred when she concluded the subject property was "developed" as golf course. H.O. Decision, p. 25-28.

¹ The version of the H.O. Decision received by Appellant did not contain page numbers. Therefore, for purposes of specificity, the Appellant numbered the pages, attached the Decision hereto and refers to those page numbers to identify the issues on appeal in the assignments of error.

(e) The Hearings Officer erred when she concluded the configuration of the driveways for Lots 8 and 9 did not create a safe environment within the meaning of DCC 18.124.060C. H.O. Decision, p. 45.

(f) The Hearings Officer erred when she concluded the configuration of Lots 8 and 9 will create safety hazards and therefore not be harmonious within the meaning of DCC 18.124.060E. H.O. Decision, p. 46.

(g) The Hearings Officer erred when she concluded the proposed subdivision and residential development will not be consistent with the land use patterns of the area. H.O. Decision, p. 55.

(h) The Hearings Officer's decision violates Article I, Section 18 of the Oregon Constitution and the Fifth Amendment of the U.S. Constitution by interpreting the County Code in a way that results in a taking of private property for public use by requiring the private property owner to devote his property to golf course or community use for the benefit of the community.

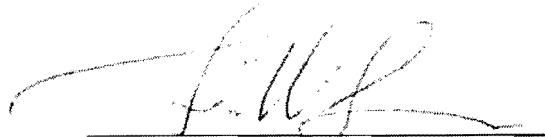
5. Request for De Novo Review.

Appellant requests review by the Board because the Hearings Officer interprets the Resort Community Ordinance and the findings for that Ordinance, as adopted by the Board, for the first time. She interprets it incorrectly in many instances and in a way which precludes future development of private property.

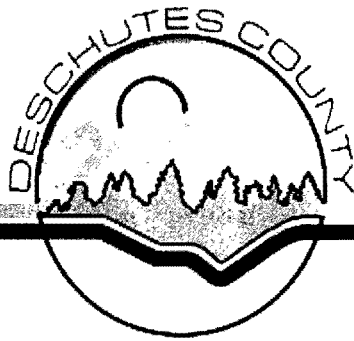
De novo review is required because it is necessary to fully and properly evaluate several significant policy issues relevant to the proposed land use action. Specifically, de novo review is necessary to fully evaluate and correct the Hearings Officer's conclusions regarding the scope, intent and meaning of the Resort Community zone, the supporting plan policies and definitions and to correct her unfounded conclusions that the County took a physically committed exception to Goal 4 and rezoned the community for Resort uses only to maintain the status quo.

DATED this 17th day of April, 2015.

Schwabe, Williamson & Wyatt, P.C.



Tia M. Lewis, OSB # 933437
Of Attorneys for Appellant



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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<http://www.deschutes.org/cd>

NOTICE OF PUBLIC HEARING

The Deschutes County Board of Commissioners will hold a public hearing on January 27, 2016, at 10 AM in the Deschutes County Board of Commissioners Hearing Room at 1300 NW Wall Street, Bend, to take testimony on the following item:

FILE NUMBERS: 247-14-000395-TP, 247-14-000396-SP, 247-14-000397-LM

PROPOSAL: The applicant requests approval of a nine-lot, zero-lot-line subdivision called "The Refuge at Widgi Creek," as well as site plan and LM review for dwellings on the proposed subdivision lots, on property in Widgi Creek zoned RC and LM (Fairway application).

STAFF REVIEWER: Will Groves, Senior Planner

Seven (7) days prior to the public hearing, copies of the proposed documents and attachments will be available for inspection at no cost at the Deschutes County Community Development Department at 117 NW Lafayette Avenue. Copies of the documents and attachments can be purchased at the office for (25) cents a page.

ALL INTERESTED PERSONS MAY APPEAR, BE HEARD, BE REPRESENTED BY COUNSEL, OR SEND WRITTEN SIGNED TESTIMONY. ALL WRITTEN REPLIES MUST BE RECEIVED BY THIS DEPARTMENT PRIOR TO THE HEARING DATE OR SUBMITTED AT THE HEARING. ANY PARTY TO THE APPLICATION IS ENTITLED TO A CONTINUANCE OF THE INITIAL EVIDENTIARY HEARING OR TO HAVE THE RECORD LEFT OPEN IN ACCORDANCE WITH SECTION 22.24.140 OF THE DESCHUTES COUNTY CODE.

Recipients of this notice may request a copy of the Staff Report (25 cents a page). Any person submitting written comment or who presents testimony at the hearing will receive a copy of the decision.

Failure to raise an issue in person at the hearing or in writing precludes appeal by that person to the Land Use Board of Appeals (LUBA). Failure to provide statements of evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue.

Copies of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at the Planning Division at no cost, and can be purchased for 25 cents a page.

STANDARDS AND APPLICABLE CRITERIA:

A. Title 17 of the Deschutes County Code, the Subdivision/Partition Ordinance

1. Chapter 17.16, Approval of Subdivision Tentative Plans and Master Development Plans

- * Section 17.16.100, Required Findings for Approval**
- * Section 17.16.105, Access to Subdivisions**

2. Chapter 17.20, Zero Lot Subdivision

- * Section 17.20.010, Requirements**
- * Section 17.20.100, Required Findings for Approval**

3. Chapter 17.36, Design Standards

- * Section 17.36.020, Streets**
- * Section 17.36.040, Existing Streets**
- * Section 17.36.050, Continuation of Streets**
- * Section 17.36.060, Minimum Right of Way and Roadway Width**
- * Section 17.36.080, Future Extension of Streets**
- * Section 17.36.120, Street Names**
- * Section 17.36.130, Sidewalks**
- * Section 17.36.140, Bicycle, Pedestrian and Transit Requirements**
- * Section 17.36.150, Blocks**
- * Section 17.36.160, Easements**
- * Section 17.36.170, Lots – Size and Shape**
- * Section 17.36.180, Frontage**
- * Section 17.36.190, Through Lots**
- * Section 17.36.200, Corner Lots**
- * Section 17.36.210, Solar Access Performance**
- * Section 17.36.220, Underground Facilities**
- * Section 17.36.230, Grading of Building Sites**
- * Section 17.36.250, Lighting**
- * Section 17.36.260, Fire Hazards**
- * Section 17.36.270, Street Tree Planting**
- * Section 17.36.280, Water and Sewer Lines**
- * Section 17.36.300, Public Water System**

4. Chapter 17.44, Park Development

- * Section 17.44.010, Dedication of Land**
- * Section 17.44.020, Fee in Lieu of Dedication**

5. Chapter 17.48, Design and Construction Specifications

- * Section 17.48.160, Road Development Requirements -- Standards**
- * Section 17.48.180, Private Roads**

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

1. Chapter 18.04, Title, Purpose and Definitions
2. Chapter 18.08, Basic Provisions
3. Chapter 18.84, Landscape Management Combining Zone
4. Chapter 18.110, Resort Community Zone
5. Chapter 18.116, Supplementary Provisions
6. Chapter 18.124, Site Plan Review.

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

1. Chapter 22.04, Introduction and Definitions
2. Chapter 22.20, Review of Land Use Action Applications
3. Chapter 22.24, Land Use Action Hearings

D. Deschutes County Comprehensive Plan

1. Chapter 4, Urban Growth

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.

Please contact Will Groves at (541) 388-6518 if you have any questions.

Deschutes County encourages persons with disabilities to participate in all programs and activities. This event/location is accessible to people with disabilities. If you need accommodations to make participation possible, please call the ADA Coordinator at (541) 617-4747.

Dated this ____ day of _____, 2016 Mailed this ____ day of _____, 2016