AGENDA REQUEST & STAFF REPORT
For Board Business Meeting of March 2, 2015


FROM: Peter Gutowsky. Department CDD Phone # ext. 1709

TITLE OF AGENDA ITEM:
Board deliberation of File No. DR-13-16; MA-14-1; 247-14-000165-A.

PUBLIC HEARING ON THIS DATE? No.

BACKGROUND AND POLICY IMPLICATIONS:
The Board conducted a de novo public hearing on January 13, to clarify what requirements are necessary for a homeowner’s or maintenance agreement to be approved for property identified on County Assessor’s Map 16-11-19, tax lot 300. The written record was left open until January 27, with a one week rebuttal period to February 3, and one week, February 10 for final argument.

FISCAL IMPLICATIONS:
None.

RECOMMENDATION & ACTION REQUESTED:
Deliberate, and provide direction to staff.

ATTENDANCE: Peter Gutowsky, Planning Manager

DISTRIBUTION OF DOCUMENTS:
Peter Gutowsky.
STAFF REPORT

DATE: February 22, 2016
TO: Deschutes County Board of Commissioners
FROM: Peter Gutowsky, Planning Manager
RE: Work Session and Deliberation: Declaratory Ruling (File No. DR-13-16; MA-14-1; 247-14-000165-A)

The Board of County Commissioners (Board) is conducting a work session on February 29 in preparation for their deliberation scheduled on March 2 for File No. DR-13-16; MA-14-1; 247-14-000165-A.

I. Background

Applicants, Jeff and Pat Dowell, applied for a Declaratory Ruling (DR) to clarify what requirements are necessary for a homeowner's or maintenance agreement to be approved for property identified on County Assessor's Map 16-11-19, tax lot 300. The DR application went before a Hearings Officer on December 3, 2013. The record closed on March 28, 2014 and a decision was issued on June 3, 2014. The Hearings Officer determined that the proposed agreement did not meet the requirement for a maintenance agreement, and set forth conditions for an agreement, including a requirement that both the Dowells and Kuhns sign a maintenance agreement which provides for maintenance of TL 300. The Dowell's reactivated their appeal of the Hearings Officer decision in May 2015 and the Board, under Order No. 2015-032, determined they would hear it de novo.

II. Issues Requiring a Board Decision

The Board needs to determine whether they want to clarify the requirements that are necessary for a homeowner's or maintenance agreement for the open space parcel (tax lot 300). Staff provided a matrix for the Board to assist them in formulating a decision. If the Board identifies the items to be included in an agreement, Commissioners will need to determine if they want staff to prepare the agreement and include it as an exhibit with the decision.

III. Public Hearing

The Board conducted a public hearing on January 13, 2016. The written record was left open until January 27, with a one week rebuttal period to February 3, and one week, February 10 for final argument.
IV. Additional Testimony, Rebuttal, and Final Argument

Written testimony (January 13 to January 27):

- Kuhn email dated January 14 (Attachment A)
- Kuhn email dated January 27 (Attachment B)
- Gutowsky email dated January 27 (Attachment C)
- Dowell supplemental argument (Attachment D)
- Kuhn Docs 1 (Attachment E)
- Kuhn Docs 2 (Attachment F)

Rebuttal:

- Kuhn rebuttal (Attachment G)
- Dowell rebuttal (Attachment H)

Final Argument:

- Dowell final argument (Attachment I)

V. 150-Day Deadline for a Decision

To the extent the 150-day timeline applies to this declaratory ruling, the applicant on January 13 stated that she would extend it an additional 90 days, which is April 12.
Declaratory Ruling / Maintenance Agreement Requirements

<table>
<thead>
<tr>
<th>Foundational Questions</th>
<th>Board Decision</th>
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<tbody>
<tr>
<td><strong>Question 1</strong>: Does the Board want to clarify the requirements that are necessary for a homeowner’s or maintenance agreement for the open space parcel (tax lot 300) which will satisfy Condition of Approval #2 of CU-80-02?</td>
<td>If no, the Board relies on the Hearings Officer decision. If yes, proceed to Question 2.</td>
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<tr>
<td><strong>Question 2</strong>: Should the Board direct staff to prepare an agreement with the elements agreed upon below and include it as an exhibit with a forthcoming decision?</td>
<td>Requires Board determination, and then proceed to Question 3.</td>
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<th>Potential Elements in a Maintenance Agreement</th>
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<td><strong>OPEN SPACE</strong></td>
<td></td>
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<td><strong>Question 3</strong>: Must a required homeowner’s or maintenance agreement be a vehicle for preservation of open space values and therefore include a provision describing how vegetation is to be maintained for wildlife habitat values?</td>
<td>If no, proceed to Question 4. If yes, skip Question 4.</td>
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<td><strong>Question 4</strong>: Should the homeowner’s or maintenance agreement limit the scope exclusively to maintenance issues such as property taxes and the sharing of costs for the maintenance expenses necessary to keep the Open Space Parcel compliant with applicable laws and regulations, including but not limited to noxious vegetation, wildfire risk, fire standards in F-2 zone, and building codes?</td>
<td>Requires Board determination</td>
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<tr>
<td><strong>Question 5</strong>: Should there be maintenance standards and restrictions pertaining to utility lines, off-road vehicles, fencing, discharge of firearms, hunting or trapping, livestock, pets, noise, exterior lighting, dumping or storing of waste material, trash, and open burning?</td>
<td>Requires Board determination</td>
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| DISPUTES                                                                                   |                                                                                  |
| **Question 6**: Should disputes between the Kuhns and Dowells be subject to resolution through binding arbitration before the Arbitration Service of Portland? | Requires Board determination |

<p>| REQUIRED SIGNATORIES / OWNERSHIP OF TAX LOT 300                                             |                                                                                  |
| <strong>Question 7</strong>: Must the Kuhns and Dowells execute the obligations of the original developer jointly, including jointly signing the homeowner’s or maintenance agreement and recording it against the residential parcels? | If no, proceed to Question 8. If yes, skip Question 8 and proceed to Question 9. |</p>
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<td><strong>Question 8:</strong> Can the interests in tax lot 300 (Open Space Parcel) be severed from the residential parcels enabling the agreement to only be recorded against the Open Space Parcel and not be signed by both the Dowells and the Kuhns because the parcel is a distinct unit of land requiring subsequent owners of it to be on notice of their obligations, should they acquire an interest in the parcel?</td>
<td>Requires Board determination. If yes, skip Question 9.</td>
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<td><strong>Question 9:</strong> Should an agreement specify taxes and a split assessment account?</td>
<td>Requires Board determination</td>
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