

***William John Kuhn***

***Martha Leigh Kuhn***

PO Box 5996 Bend, Oregon 97708-5996

Phone: (541) 389-3676

Tuesday 26 May 2015

Regarding 247-14-000165-A which is an appeal of DR 13-16/ MA 14-1

Dear County Commissioners,

Although there are flaws in Hearings Officer Green's decision we believe it might be best to not hear this appeal because the main issue raised in the appeal has already been decided by the Board and upheld by LUBA. If you do, however, decide to hear the appeal please consider these significant and realistic issues.

It is our furvent hope to eventually find a fair, just, ethical, and honorable solution to our nightmare in Deschutes County known to you as the Kuhn/Dowell situation.

The basics of the problem are:

1. ignored and unequally enforced land use restrictions;
2. how to properly weigh property rights; and
3. deep seated lack of moral and ethical integrity.

We, the Kuhns, have already secured a factual stipulated agreement that establishes 20 different specific facts, one of which is that our property values are lower than they ought to be because of the property restrictions Deschutes County has put on us.

We have realized since January 1997 and realtors have insisted since 2000 that our property isn't worth diddly squat unless the other party in our cluster development follows the basic social rules and requirements.

The stipulated facts agreement between the Kuhns and Deschutes County also says that it has been an error for this County to call us negligent. In layman terms the stipulated agreement basically says that we did nothing wrong and that we followed all the rules, regulations, ordinances and state statutes. And again in layman terms, it is reasonable to imply that the blame, the accountability, the responsibility, and the fault that needs correcting lies elsewhere and not with us.

It is also reasonable for the lay person to figure out that there are three parties involved. The Kuhns, Deschutes County, and the other party. And because there are three parties involved it is neither reasonable, prudent, nor wise for us to subject ourselves to mediation or arbitration that is overseen by Deschutes County which has treated us and its own ordinances with such disrespect.

Regarding the three basic problems:

## **1 Ignored and unequally enforced Land Use Restrictions which are meant to protect basic Goal 5 principals.**

You would think that of all the property locations in Deschutes County the greatest restrictions would be found in a Goal 5 protected area. Landscape Management Overlay, Wildlife Area Overlay, Forest Zone issues, Fire Fuels reduction concerns, weed abatement, and Deed Restrictions that specifically prohibited owners from acquiring new dogs after purchase would normally be sufficient deterrents for most prospective purchasers to at least think twice. The party that bought in 1989, however, without benefit of legal or real estate professional help, didn't buy title insurance, didn't use the escrow process, and who were determined to obliterate the no-new-dog deed restriction at any cost through their personally drawn and fraudulent land purchase contract. They tried to eliminate the no-new-dog deed restriction as well as claiming full and sole ownership of the jointly owned parcel. They recorded this fraudulent purchase contract and then used it inappropriately in applications to Deschutes County.

A list of several specific examples are readily available for consideration such as:

Why did County require the owners of TL200 to obtain a lot line adjustment to deal with the 100 foot minimum side yard set backs in a forest zone, while the TL100 owners were allowed to skate by and then were granted ex-post facto approval while other parcels in Deschutes County in similar situations were also obligated to obtain lot line adjustments?

## **2 How to properly weigh Property Rights which are one of the most essential guidelines we all hold dear.**

My property - my castle is the first and most recognized concept model when arguing property rights. The second model concept shows property as a form of investment in a market economy that creates reasonable expectations likely to yield economic rewards. We do not deny either of these concepts and models. We embrace them. The investment concept is the very basis for our property tax appeal – since we can't legally or ethically sell our property, then how can it be worth what Deschutes County says its worth.

There is however, a third concept of property rights that needs consideration and that is the obligation of ownership. Having absolute domain over your property does not give the owner the right to use their property to harm others. You cannot legally build an unsafe structure. That is one of the reasons why we have building codes. This was also at the root of the abolitionist movement to eliminate slavery.

Ownership is not just about rights; it is equally about obligations.

We can argue about exactly what those obligations of ownership should be, but the existence and importance of the obligations of ownership should not be in doubt. The Hearings Officer's decision begins the discussion of what those obligations might be.

When our rights of ownership are fraudulantly denied us by government, and when those who ignore their ownership obligations cause us both physical and financial harm, we are able to show that we do not flourish. Is that how you want Deschutes County to be shown to the rest of the world? Are you, the County Commissioners, willing to give preferential treatment to those who did not follow the law, who did not even follow their own landscape management plan, and who are now holding us hostage for \$750,000 even though we are the ones who had to pay the entire cost of

development within our cluster, and continue to be the only owners to maintain the common parcel while the other ½ owners contribute nothing, do nothing, and continue to refuse to abide by the civil court ruling that requires them to enter into a homeowners agreement that establishes a homeowners association with us or abide by the conditional use for this cluster.

### **3 Deep seated lack of moral and ethical integrity with no sense of community or social responsibility.**

What is the purpose and intent of Chapter 18?

#### **18.04.020. Purpose.**

- A. The intent or purpose of DCC Title 18 is **to promote the public health, safety and general welfare and to carry out the Deschutes County Comprehensive Plan**, the provisions of ORS 215 and the Statewide Planning Goals adopted pursuant to ORS 197. DCC Title 18 is to establish zoning districts and regulations governing the development and use of land within portions of Deschutes County, Oregon;
- B. To provide regulations governing nonconforming uses and structures; to establish and provide for the collection of fees; **to provide for the administration of DCC Title 18 and for the officials whose duty it shall be to enforce the provisions thereof; to provide penalties for the violations of DCC Title 18; and to provide for resolution of conflicts;**

From a local professional HOA management firm we received these words of wisdom:

“One of the biggest advantages of living in an HOA is the ability of the association to preserve, protect and enhance property values... The secret to a successful HOA is that each member acknowledges their role in the community and at times be willing to take on some added responsibility... Think about a greater concern in our society of HOAs: RESPONSIBILITY. Who is responsible for maintenance of our homes? Our landscape? Who is responsible for our behavior? What does your neighbor think of your behavior and what do you think of theirs?... When you purchase a home in an HOA you automatically become a member of the association and are bound to deed restrictions, covenants and conditions (CC&Rs). These rules and restrictions are to protect the community and to maintain or improve property values.”

We have not had these crucial advantages because we are denied our homeowners association. We have had to deal with property owners who have refused any responsibility except the paying of taxes.

What we would like the Deschutes Board of County Commissioners to do is to emphatically communicate to the appellants that enough is enough. We ask you to please consider as appropriate for this appeal what you did when reviewing the Peery Appeal of a DR in January 2008. Please see the minutes of your “Consideration of Whether to Hear an Appeal (File #A-07-21) of the Hearings Officer’s Decision Revoking Land Use Approvals for the Construction of a Dwelling (Applicant: Peery).”

We also strongly suggest you at least scan the very small sampling of documents that helps paint the picture of who and what we have had to deal with beginning the summer of 1989 when the other party claimed 100% of the common parcel as their own.

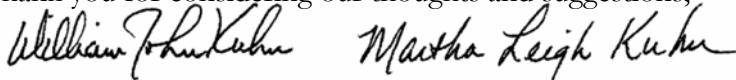
What the Board of County Commissioners must do is to prevent this stupid situation from continuing. We want our property rights restored, and we want to be able to refinance. We want to live safely here; we want the right to enjoy our property. We want to be able to steward and maintain this land as Goal 5 intended. However that can be best achieved, it can't be achieved without positive, forceful and creative action by this Board of County Commissioners. And as our stipulation agreement says we did everything by the book.

Please see these Exhibits and understand their significance:

1. Stipulation Agreement between Deschutes County and the Kuhns
2. Dowell 1989 purchase contract
3. Dowell recent email – re no-new-dogs as concession
4. Spitz report on what the 33.21 acre common parcel contains and its challenges
5. Civility & Home Associations by Teresa Payne
6. BoCC considers Peery appeal request from January 2008

These are just a small fraction of the “truths” that need to be considered.

Thank you for considering our thoughts and suggestions,

Handwritten signatures of William John Kuhn and Martha Leigh Kuhn in black ink.

William John Kuhn and Martha Leigh Kuhn

# Andrew S. Mathers, P.C.

ATTORNEY AT LAW

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August 20, 2014

Magistrate Allison R. Boomer  
Oregon Tax Court  
1163 State Street  
Salem, Oregon 97301-2563

VIA UNITED STATES FIRST CLASS MAIL; and  
FACSIMILE (503) 986-4507

Re: William and Martha Kuhn v. Deschutes County Assessor  
Case No. 140068N  
Settlement and Order

Dear Judge Boomer:

Please find enclosed the Stipulations; Settlement of Appeal; and Order (the "Order"), which provides an agreement to lower the Real Market Value and Assessed Value of Tax Lot 300. The Order includes Factual Stipulations as part of the agreement and Order. Also enclosed are two conformed copies with self-addressed stamped envelopes for each party.

We request the Court sign the enclosed Order and conform the copies. Please mail the conformed copies using the self-addressed stamped envelopes.

Please call me if you have any questions.

Sincerely,



Andrew S. Mathers

Cc: David Doyle



## Legal Counsel

1300 NW WALL STREET, SUITE 205 • BEND, OREGON 97701-1960  
TELEPHONE ☎541-388-6623  
541-388-6624  
FACSIMILE ☎541-617-4748

*David Doyle, Legal Counsel*  
*Laurie E. Craghead, Assistant Legal Counsel*  
*Christopher Bell, Assistant Legal Counsel*  
*John E. Laherty, Assistant Legal Counsel*

August 19, 2014

**Andrew S. Mathers, Esq.**  
**Attorney at Law**  
250 NW Franklin Ave #401  
Bend, OR 97701

Please Refer To  
File No. 2/4-187

Re: Kuhn v. Assessor  
Case No. 140068N

Dear Mr. Mathers:

Enclosed please find the Stipulation pleading which is signed and dated by the Assessor. This document remains a "settlement negotiation document" until fully executed by Bill and Leigh.

Once it is fully executed by Bill and Leigh you are authorized to submit same to the Tax Court. The document has no legal status and remains inadmissible in all matters and proceedings unless and until it is fully executed by Bill and Leigh.

Please scan/email me a copy as soon as it is fully executed by Bill and Leigh.

Thank you.

Respectfully,

David Doyle  
Deschutes County Legal Counsel

Enclosure

DD/s

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IN THE OREGON TAX COURT  
Magistrate Division  
Property Tax

WILLIAM JOHN KUHN and MARTHA  
LEIGH KUHN,

Plaintiffs,

v.

DESCHUTES COUNTY ASSESSOR,

Defendant.

TC-MD 140068N

STIPULATIONS; SETTLEMENT OF  
APPEAL; ORDER  
(TCR-MD Rule 2F)

The parties enter into and agree to the below Stipulations:

A. Factual Stipulations

1. Deschutes County Conditional Use 80-22 allowed a “cluster development” on a 43 acre parcel in the Tumalo Winter Deer Range.
2. In 1980, the requirements for development were addressed in PL-15 and included:
  - (a) allowance for a “cluster development” in order to create parcels smaller than the 40 acre minimum required in the WA overlay zone; (b) compliance with subdivision requirements contained in PL-14; and (c) a written agreement establishing a homeowners agreement / association.
3. The approved “cluster development” required a substantial set aside for wildlife habitat.
4. As implemented, the approved “cluster development” authorized two 4.3 acre parcels and one 34.4 acre parcel.

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5. CU 80-22 required that “prior to the sale of any lot a written agreement shall be recorded which establishes an acceptable homeowners association or agreement assuring the maintenance of common property in the partition,” which is a Goal 5 issue.
  6. In 1987, without the recording of a homeowners association or agreement, Kuhn purchased one of the 4.3 acre parcels, Tax Lot 200, and one-half interest in the 34.4 acre parcel, Tax Lot 300.
  7. In 1987, prior to the Kuhn’s purchase of Tax Lot 200 and one-half interest in Tax Lot 300, Deschutes County informed Kuhn that before a building permit could be issued the deed restrictions identified in the CU 80-22 application had to be recorded.
  8. In November 1988, Deschutes County approved the Kuhn’s Landscape Management Plan; one of the approval conditions required Kuhn to provide Deschutes County with a copy of the Homeowners Maintenance agreement for Tax Lot 300.
  9. At all times from November 1988 until February 2010, Deschutes County staff maintained that the recorded deed restrictions encumbering the three “cluster development” parcels satisfied the requirement in CU 80-22 and in the Landscape Management Plan that Kuhn record a Homeowners Maintenance agreement for Tax Lot 300.
  10. Deschutes County granted Kuhn lot line adjustment approval, accepted Kuhn’s Landscape Management Plan, and issued building permits for Kuhn’s home without a “recorded . . . acceptable homeowners association or agreement . . .” Kuhn has complied with applicable laws, codes and requirements from CU 80-22.



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11. Kuhn brought the lack of and need for a homeowners association agreement to the attention of Deschutes County in January 1997 through the code enforcement complaint system.

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12. Beginning in August 2000, Kuhn requested that Deschutes County record the final partition plat map for the subject "cluster development." Deschutes County recorded it in October 2004.

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13. In February 2010, the Deschutes County Board of Commissioners held that the dwellings within the "cluster development," Tax Lot 100 (Dowell) and Tax Lot 200 (Kuhn) "are not lawfully established until a written agreement is recorded that establishes an acceptable homeowners association or agreement assuring the maintenance of common property in the partition." This decision requires a written, signed and recorded agreement that is agreed to by Kuhn and Dowell and also deemed "acceptable" by Deschutes County.

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14. At all times relevant to this appeal, despite Judge Adler's 2002 ruling requiring a homeowners association agreement, and despite multiple attempts by both Kuhn and Dowell, no homeowners maintenance agreement covering Tax Lot 300, has been agreed to or recorded.

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15. Judge Adler's 2002 court order required the Dowells to enter into a Homeowners Agreement with Kuhn; the court order remains unfulfilled.

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16. For tax year 2013-2014 (at issue in this proceeding) the Assessor imposed the following values for Kuhn's one-half interest in Tax Lot 300: (a) RMV: \$82,420; (b) MAV: \$44,330; (c) TAV: \$44,330. These values were sustained by BOPTA in Petition No. 13-153.

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2 17. At the time of the BOPTA proceeding in Petition No. 13-153, the Assessor provided a  
3 written summary (dated February 19, 2014) that included the following:

4 “PROPERTY RESTRICTIONS: The restrictions stated by the petitioner can be  
5 remedied at any time by recording a Homeowners Association Agreement. The  
6 restrictions are not an effect of real estate market factors or conditions. The  
7 restrictions are an effect of the parties involved negligence to record a Homeowners  
8 Association Agreement. Any disagreements between the parties involved are their  
9 responsibility to resolve.”

10 18. The Assessor’s use of the word “negligence” was in error.

11 19. Since the BOPTA proceeding, and following an extensive inspection of Tax Lot 300,  
12 the Assessor has agreed to reduce the 2013-2014 values for Kuhn’s one-half interest  
13 in Tax Lot 300 to: (a) RMV: \$35,000; (b) MAV: \$44,330; (c) TAV: \$35,000. This  
14 reduction does account for the requirement in CU 80-22 and Judge Adler’s court  
15 order requiring that a joint homeowners agreement be recorded.

16 20. At no time since creation of Tax Lot 300 have any of the involved parties  
17 (Barton(alone), Barton/Burchett, Burchett/Kuhn, or Kuhn/Dowell) recorded a signed  
18 Homeowners Agreement.

19 B. Settlement Stipulation

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21 1. The present tax appeal (TC-MD 140068N) is fully resolved, compromised and settled  
22 as provided herein.

23 2. The parties request that the Court dismiss the appeal.

24 3. Each party to bear its own costs and fees (including attorney fees).  
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C. Agreement

THE STIPULATIONS contained herein are understood and agreed to.

Date: 20140820.3

William John Kuhn  
William John Kuhn

Date: 8/20/14

Martha Leigh Kuhn  
Martha Leigh Kuhn

\*\*\*\*\*

Date: 8/19/14

Scot Langton  
Scot Langton, Assessor

D. Order

1. ITS IS ORDERED that the appeal is dismissed upon settlement of the parties and pursuant to the terms of the stipulations contained herein.
2. Each party is to bear its own costs and fees (including attorney fees).

DATED this \_\_\_\_\_ day of August, 2014.

\_\_\_\_\_  
ALLISON R. BOOMER  
MAGISTRATE



**MAGISTRATE DIVISION  
OREGON TAX COURT**

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Presiding Magistrate: Jill A. Tanner Magistrates: Daniel K. Robinson  
Allison R. Boomer

August 25, 2014

Andrew Mathers  
Andrew S Mathers PC  
250 NW Franklin Ave Ste 401  
Bend OR 97701

Deschutes County Legal Counsel  
David Doyle  
1300 NW Wall St #205  
Bend OR 97701

RE: William John Kuhn and Martha Leigh Kuhn v. Deschutes County Assessor  
TC-MD 140068N

Dear Parties:

Enclosed is a copy of the Judgment of Dismissal signed by Magistrate Allison R. Boomer on August 25, 2014. The case has now been closed and all scheduled proceedings canceled. If you submitted exhibits to the court and would like them returned to you, you must contact the court in writing within 30 days from the date of this letter, or they will be destroyed.

If you have any questions, please call the court at (503) 986-5650. Thank you for your attention to this matter.

Enclosure

14 AUG 25 AM 9:37

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax


WILLIAM JOHN KUHN	)	
and MARTHA LEIGH KUHN,	)	
	)	
Plaintiffs,	)	TC-MD 140068N
	)	
v.	)	
	)	
DESCHUTES COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>JUDGMENT OF DISMISSAL</b>

This matter is before the court on the parties’ Stipulations and Settlement of Appeal (stipulation) filed on August 21, 2014. In the stipulation, the parties stated that this appeal “is fully resolved, compromised and settled \* \* \* [and][t]he parties request that the Court dismiss the appeal.” (Stip at 4.) The parties agreed that neither shall be entitled to costs and fees. (*Id.*) After considering the request, the court finds the case should be dismissed. Now, therefore,

IT IS ADJUDGED that Plaintiffs’ appeal is dismissed.

IT IS FURTHER ADJUDGED that, by agreement of the parties, neither party shall be awarded costs and disbursements.

Dated this 25<sup>th</sup> day of August 2014.


---

ALLISON R. BOOMER  
MAGISTRATE

***Judgments from the Magistrate Division are final and may not be appealed.  
ORS 305.501.***

89-24952  
Contract - Deed

193 - 0075

This agreement made and entered into this 3rd day of August 1989, by and between MARK BURCHETT, hereinafter "seller" and JEFF DOWELL and PATTI DOWELL, hereinafter "purchaser", witnesseth that:

(I) "Seller" hereby agrees to sell to "purchaser" and "purchaser" agrees to purchase and pay for certain real property located in Deschutes County, Oregon and more particularly described as follows, to wit: A parcel of land located in the North 1/2 of Section 19, T.16 S., R. 11 E., W.M., Deschutes County, Oregon which is described as follows:

Commencing at the Northeast corner of said Section 19; thence N 89°11'47" W 1208.23'; thence S 00°48'13" W 200.00 feet to the TRUE POINT OF BEGINNING; thence S 89°11'47" E 946.35' to the Westerly right-of-way line of the Sisemore County Road; thence along said right of way line on a 153.80' radius curve right 77.43', the long chord of which bears S 29°07'55" W 76.62'; thence along said right of way line S 43°33'17" 117.24'; thence along said right of way line on a 194.18' radius curve right 81.01', the long chord of which bears S 55°30'22" W 80.42'; thence N 89°11'47" W 826.06'; thence N 00°48'13" E 200.00'; thence S 89°11'47" E 61.29' to the TRUE POINT OF BEGINNING containing 34.5 acres more or less.

(2) A parcel of land located in Section 19, T.16 S., R.11 E., W.M., Deschutes County, Oregon and described as follows:

Beginning at the Northeast corner of said Section 19; thence N 89°11'47" W 306.60 feet to the Westerly right- of-way line of Sisemore County Road and the true point of beginning; thence along said right-of-way line S 23°56'02" E, 66.67 feet; thence along said right-of-way line on a 233.88 foot radius curve right 114.47 feet, the long chord of which bears S 09°54'46" E, 113.33 feet; thence along said right-of-way line on a 153.80 foot radius curve right 28.46 feet; the long chord of which bears S 09°24'32" W 28.42 feet; thence N 89°11'47" W, 946.35 feet; thence N 00°48'13" E, 200.00 feet; thence S 89°11'47" E, 901.63 feet to the TRUE POINT OF BEGINNING, containing 4.3 acres more or less net.

II. The total purchase price of forty-two thousand dollars (\$42,000) is to be paid by "purchaser" to "seller" in a manner more particularly described as follows: (1) "Purchaser" pays twenty-five thousand dollars (\$25,000) upon acceptance of this agreement, (2) "Purchaser" pays remaining balance seventeen thousand dollars (\$17,000) over 15 years at a fixed interest rate of 9.5% with option to recalculate mortgage whenever a lump sum payment of five thousand dollars (\$5,000) or more is made. There are no penalties for paying off mortgage early and early payment is encouraged by both parties.

III. Conveyence of the real property by "seller" to the "purchaser" shall be made by warranty deed conveying marketable title in and to the subject property subject to all easements and incumbrances of record upon final payment of subject property.

IV. "Purchaser" shall be entitled to possession of said property upon acceptance of this agreement.

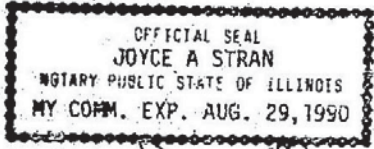
V. All ad valorem real property taxes and all governmental or other assessments levied against said property for the current tax year shall be divided equally between "seller" and "purchaser" (July 1st was approximate date of verbal agreement). "Purchaser" shall pay recording fees for recording the deed. "Seller" shall pay the recording fees for release of deed of trust.

- VI. "Purchaser" agrees to land use restrictions described as follows:
1. Owners or family members may not operate dirt bikes on the property.
  2. All telephone and electric lines must be underground.
  3. All fencing must be wood. Top rail may not be higher than 42", bottom rail may not be lower than 18". No barbed wire or straight wire may be used for fencing.
  4. Owner or family members may not take target practice with rifle or handgun on property.
  5. 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.
- VII. This agreement is the entire, final and complete agreement of the parties to the sale and purchase of said property, and supersedes and replaces all prior existing written and oral agreements between both parties.
- VIII. "Purchaser" accepts said property in its present condition, as is, including latent defects, without any representations or warranties, expressed or implied. "Purchaser" agrees that "purchaser" shall ascertain, from sources other than "seller", the applicable zoning, building, housing and other regulatory ordinances and laws and that "purchaser" accepts said property with full awareness of these ordinances and laws as they may affect the present use or any intended future use of said property, and "seller" has made no representations with respect to such laws and ordinances. This instrument does not guarantee that any particular use may be made of the property described in this instrument. "Purchaser" should check with the appropriate county planning department to verify approved uses.

Mark Burchett  
Mark Burchett ("seller")

9/20/89  
date

Joyce A. Stran  
Notary Public for the "seller"



Jeff Dowell  
Jeff Dowell ("purchaser")

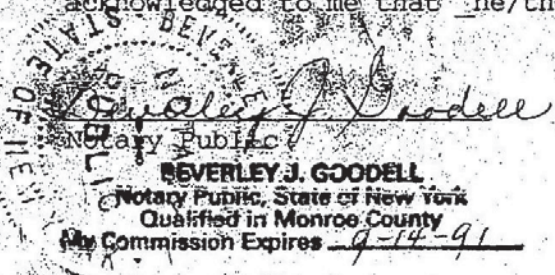
9/6/89  
date

Patti Dowell  
Patti Dowell ("purchaser")

9/7/89  
date

State of New York)  
County of Monroe) SS.:

On this 7th day of September, 1989, before me personally appeared  
Jeff Dowell and Patti Dowell to me known and known to me to be the  
individual(s) described in and who executed the within instrument, and he/they  
acknowledged to me that he/they executed the same.



9-7-89  
date

Note: Please send all subsequent tax documents to:

Jeff Dowell  
422 Lakeshore Drive  
Hilton NY 14468



89-24952  
Contract - Deed

This agreement made and entered into this 3rd day of August 1989, by and between MARK BURCHETT, hereinafter "seller" and JEFF DOWELL and PATTI DOWELL, hereinafter "purchaser", witnesseth that:

(I) "Seller" hereby agrees to sell to "purchaser" and "purchaser" agrees to purchase and pay for certain real property located in Deschutes county, Oregon and more particularly described as follows, to wit: A parcel of land located in the North 1/2 of Section 19, T.16 S., R. 11 E., W.M., Deschutes County, Oregon which is described as follows:

**The following is what the Dowells are describing to be the ~34.5 acres of land and that it is owned entirely by the Dowells.**

**The following is the Dowell created legal description with all the 'thence's lined up so they are easier to read.**

Commencing at the Northeast corner of said Section 19; thence N 89°11'47" W 1208.23';  
thence S 00°48'13" W 200.00 feet to the TRUE POINT OF BEGINNING;  
thence S 89°11'47" E 946.35' to the Westerly right-of-way line of the Sisemore County Road;  
thence along said right of way line on a 153.80' radius curve right 77.43',  
the long chord of which bears S 29°07'55" W 76.62';  
thence along said right of way line S 43°33'17" 117.24';  
thence along said right of way line on a 194.18' radius curve right 81.01',  
the long chord of which bears S 55°30'22" N 80.42';  
thence N 89°11'47" W 826.06';  
thence N 00°48'13" E 200.00';  
thence S 89°11'47" E 61.29' to the TRUE POINT OF BEGINNING  
containing 34.5 acres more or less.

**If you follow this on a partition plat map or on the tax map...**

The description begins at the 4 section corner of Sections 18, 17, 19, and 20.  
Measuring almost due West 1208.23 feet. (to the NW corner of the Dowell TL100)  
Then almost due South 200.00 feet to the TRUE POINT OF BEGINNING.  
Then we go almost due east 946.35 feet to get back to Sisemore Road.  
Then we go South along the arch of the road, 1st 77.43 feet,  
then strait 117.24 feet,  
then we take the arch of the road again for another 81.01'  
then we go West 826.06';  
then we go North 200.00'; and  
then we go East again for 61.29' back  
to the TRUE POINT OF BEGINNING  
and this contains 34.5 acres more or less.

**In fact it describes 2/3's of the KUHN's parcel, and it describes 4.3 acres of land.**

**There is no mention of only 1/2 interest in what is supposed to be JOINT ownership.**

**The following is what the Dowells are describing to be the 4.3 acre building lot. The following is the Dowell created legal description with all the 'thence's lined up so they are easier to read.**

(2) A parcel of land located in Section 19, T.16 S., R.11 E., W.M., Deschutes County, Oregon and described as follows:

Beginning at the Northeast corner of said Section 19;  
thence N 89°11'47" W 306.60 feet to the Westerly right- of-way line of Sisemore County Road and the true point of beginning;  
thence along said right-of-way line S 23°56'02" E, 66.67 feet;  
thence along said right-of-way line on a 233.88 foot radius curve right 114.47 feet, the long chord of which bears S 09°54'46" E, 113.33 feet;  
thence along said right-of-way line on a 153.80 foot radius curve right 28.46 feet; the long chord of which bears S 09°24'32" W 28.42 feet;  
thence N 89°11'47" W, 946.35 feet;  
thence N 00°48'13" E, 200.00 feet;  
thence S 89°11'47" E, 901.63 feet to the TRUE POINT OF BEGINNING, containing 4.3 acres more or less net.

**NOTE: Price is for 2 parcels [ (1) 34.5 acres more or less; AND (2) 4.3 acres ]**

II. The total purchase price of forty-two thousand dollars (\$42,000) is to be paid by "purchaser" to "seller" in a manner more particularly described as follows: (1) "Purchaser" pays twenty-five thousand dollars (\$25,000) upon acceptance of this agreement, (2) "Purchaser" pays remaining balance seventeen thousand dollars (\$17,000) over 15 years at a fixed interest rate of 9.5% with option to recalculate mortgage whenever a lump sum payment of five thousand dollars (\$5,000) or more is made. There are no penalties for paying off mortgage early and early payment is encouraged by both parties.

**How much of the \$42,000 is for the 4.3 acres?  
How much for the 34.5 acres more or less?"**

III. Conveyence of the real property by "seller" to the "purchaser" shall be made by warranty deed conveying marketable title in and to the subject property subject to all easements and incumbrances of record upon final payment of subject property.

IV. "Purchaser" shall be entitled to possession of said property upon acceptance of this agreement.

V. All ad valorem real property taxes and all governmental or other assessments levied against said property for the current tax year shall be divided equally between "seller" and "purchaser" (July 1st was approximate date of verbal agreement). "Purchaser" shall pay recording fees for recording the deed. "Seller" shall pay the recording fees for release of deed of trust.

**NOTE: the Dowells had NOT YET met the Kuhns. The Dowells introduced themselves to the Kuhns on the long July 4th weekend of 1989.**

**This contract was drawn up by the Dowells and claims ownership of a large portion of the Kuhn property, as well as full ownership of the joint parcel.**

**Also note: the Dowells, through this 'Contract - Deed' are attempting to remove the 'No-Dog' deed restriction which was recorded for the cluster on 20 July 1987.**

## VI. "Purchaser" agrees to land use restrictions described as follows:

1. Owners or family members may not operate dirt bikes on the property.
2. All telephone and electric lines must be underground.
3. All fencing must be Wood. Top rail may not be higher than 42", bottom rail may not be lower than 18". No barbed wire or straight wire may be used for fencing.
4. Owner or family members may not take target practice with rifle or handgun on property.
5. 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.

VII. This agreement is the entire, final and complete agreement of the parties to the sale and purchase of said property, and supersedes and replaces all prior existing written and oral agreements between both parties.

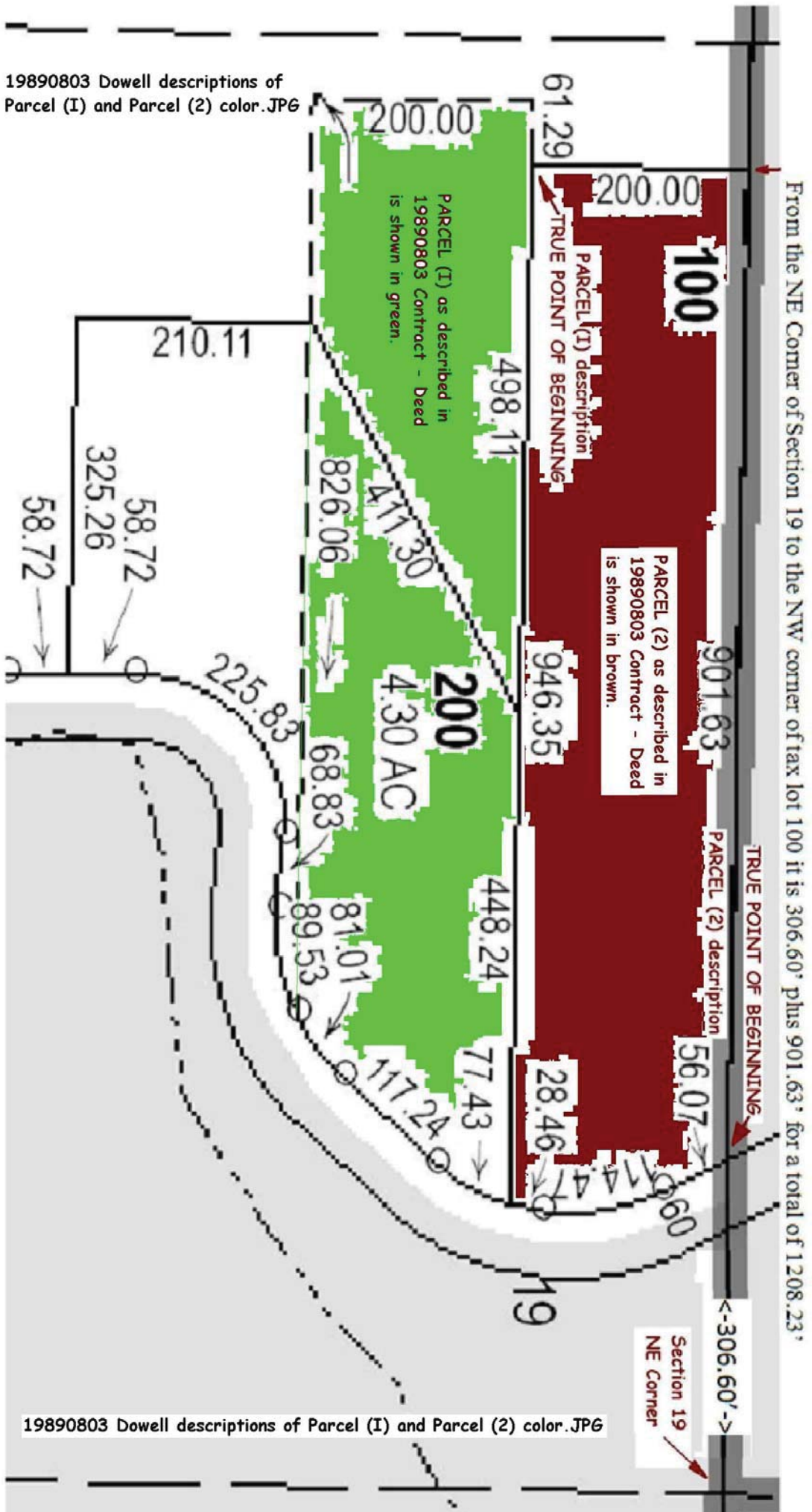
VIII. "Purchaser" accepts said property in its present condition, as is, including latent defects, without any representations or warranties, expressed or implied. "Purchaser" agrees that "purchaser" shall ascertain, from sources other than "seller", the applicable zoning, building, housing and other regulatory ordinances and laws and that "purchaser" accepts said property with full awareness of these ordinances and laws as they may affect the present use or any intended future use of said property, and "seller" has made no representations with respect to such laws and ordinances. This instrument does not guarantee that any particular use may be made of the property described in this instrument. "Purchaser" should check with the appropriate county planning department to verify approved uses.

**Note the missing number one restriction shown below from the recorded deed restrictions.**

**Covenants and Restrictions.**

1. Owners or family members may not acquire additional dogs other than the dog(s) they may own when they purchase the property. All dogs must be kept in such a way that they do not run loose in the area. Dogs allowed to "run" will disrupt deer habitat.
2. Owners or family members may not operate "dirt bikes" on the property.
3. All telephone and electric lines must be underground.
4. All fencing must be wood. Top rail may not be higher than 42"; bottom rail may not be lower than 18". No barbed wire or straight wire may be used for fencing.
5. Owners or family members may not take "target" practice with rifle or hand gun on property.
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19890803 Dowell descriptions of Parcel (I) and Parcel (2) color.JPG



20150227 email from Dowell re no dogs

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

**From:** [Jeff@Outlook](mailto:Jeff@Outlook)

**To:** [william@riskfactor.com](mailto:william@riskfactor.com) ; [windriverdesign@riskfactor.com](mailto:windriverdesign@riskfactor.com)

**Cc:** 'Pat Dowell'

**Sent:** Friday, February 27, 2015 2:55 PM

**Subject:** Dowell Kuhn Meeting?

Bill and Leigh,

Pat and I were sorry to see the County's mediation efforts break down. **We believe we made some very significant concessions (giving you the joint property, agreeing to 'no dogs' on any of the 3 parcels, etc),** in exchange for simplifying the paperwork to all but eliminate the chances for continued disagreements going forward, but apparently it wasn't enough. That is unfortunate. It's our belief that it's going to take both parties conceding more than either would like to get this settled once and for all, and move on.

To that end, you have said repeatedly that one of your 'requirements' was to meet with Pat and I directly, without attorneys present. Though we have been resistant to meeting until the basic framework of an agreement is already in place, we have given it a lot of thought and would like to see if such a meeting would be productive in reaching resolution.

We are willing to meet with you at a neutral location. Perhaps we could meet at your attorney's office in a private conference room? The best timing for us would be any time after mid-March.

Please let us know if this would be acceptable, and if so, what times and dates would work best for you.

Thank you.

Jeff Dowell

**Please note: Highlights and bold added**

**The Dowells didn't have the "no-dog" issue to give us as a concession, since the Dowells never had the right to have dogs in the first place.**

**Also, since the third parcel is actually an obligation both physical – having to deal with weeds and fire fuels reduction, and financial – having to pay not just the taxes but also for manpower to do the work, what exactly is it the Dowells are conceding? Ownership of this land is an obligation that the Dowells have never lifted a finger to help with.**

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

**From:** [Jeff@Outlook](mailto:Jeff@Outlook)

**To:** [william@riskfactor.com](mailto:william@riskfactor.com) ; [windrivedesign@riskfactor.com](mailto:windrivedesign@riskfactor.com)

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Please let us know if this would be acceptable, and if so, what times and dates would work best for you.

Thank you.

Jeff Dowell

**JIM SPITZ, ACF**  
**FORESTRY CONSULTANT**  
60045 River Bluff Trail  
Bend, Oregon 97702  
541/389-5978

July 10, 2014

William Kuhn  
P.O. Box 5996  
Bend, Oregon 97708-5996

Dear Mr. Kuhn:

This letter responds to your request that I evaluate potential economic uses and provide an opinion of value for Tax Lot 300, T16S, R11E, WM. I inspected this parcel with you on May 15, 2014. This letter summarizes the results of my inspection, property assessment, and opinion of value for this property on your requested date of value of January 1, 2013.

#### Ownership and Use Regulations

Tax Lot 300 is a separate, legal lot of record. It was created in 1980 along with Tax Lots 100 and 200, as part of a cluster development. Tax lots 100 (currently owned by Jeff and Patti Dowell) and 200 (currently owned by William and Leigh Kuhn) were created as buildable lots and now have existing structures. Tax Lot 300 was created to serve as undeveloped wildlife habitat with undivided interests by the owners of Tax Lots 100 and 200. Jeff and Patti Dowell and William and Leigh Kuhn currently own Tax Lot 300 with undivided and equal interests.

Tax Lot 300 was created with numerous land use restrictions, which remain in place. It was and is in a Forest Use zone (F-3 originally, F-2 now) and is included within both WA Wildlife Area Combining (deer winter range) and LM Landscape Management Combining overlays. The owners of Tax Lot 300 are required to develop and obtain Deschutes County approval for a homeowners association or other agreement to control management of Tax Lot 300.

Guidance on requirements for managing Tax Lot 300 is provided by findings and decisions from a 1980 Deschutes County land-use public hearing (file number CU-80-22). This guidance is derived from the Deschutes County Comprehensive Plan and other land use regulations, which were in place when Tax Lot 300 was created. Goals cited from the wildlife overlay were:

1. To preserve and protect existing fish and wildlife area.
2. To maintain all species at optimum levels to prevent serious depletion of indigenous species.
3. To develop and manage the lands and waters of this country in a manner that will enhance, where possible, the production and public enjoyment of wildlife.

More specific guidance for management of this property is provided by a staff report in 2013 (file number DR-13-16). In this report the staff's opinion is that Tax Lot 300:

1. Should be left in a natural state.
2. Farm use would be inconsistent with the intent of the 1980 code.
3. Structures, regardless of their use are prohibited.

4. Irrigation is prohibited.
5. No new dogs is an important part of the agreement, and
6. All fencing must be wood with the top rail no higher than 42 inches and the bottom rail no lower than 18 inches.

Deschutes County has blocked issuance of building permits and sale of Tax Lots 100, 200, and 300, until an approved management agreement is in place. To date a management agreement proposed by the Dowell's and efforts to create a conservation easement or a Wildlife Habitat Conservation and Management Program Plan by the Kuhn's have not achieved agreement between the property owners nor declaratory acceptance by Deschutes County. Thus, an approved management agreement for Tax Lot 300 still does not exist.

### Physical Characteristics

Tax Lot 300 contains 33.21 acres, per the Deschutes County Assessor's records. This property is located within the Cascade Mountains precipitation shadow and receives only 10 to 12 inches of precipitation annually. Sixteen inches are usually considered to be minimum for commercial timber production. Soil conditions on the property are described in the USDA Natural Resources Conservation Service National Soil Survey and are summarized in the map and table on pages 6 and 7 of this report. These are very rocky, porous soils with low nutrition, water storage capacity, and productivity in their natural condition. My inspection found only natural levels of soil erosion on this property currently. There are no streams or water bodies on this property.

Physical and legal access to the soil complex 34C portion of Tax Lot 300 is excellent via Sisemore Road, an all-season, gravel, mainline road. Road access to soil type 28A and much of complex 34C would require obtaining easements over adjoining private or BLM lands or difficult and expensive road construction from the complex 34C area.

### Vegetation and Productivity

This property supports a western juniper/sagebrush-bitterbrush/Idaho fescue plant community (Photos on pages 8 through 10). Pecks milkvetch is the most unique plant species present on this property. Pecks milkvetch is a prostrate perennial with red-colored stems and cream to pale yellow colored, butterfly-shaped flowers. Its Federal status is species of concern and its Oregon status is threatened.

Vegetation on this property is declining in health, primarily as a result of fire exclusion and lack of compensating management activities. Pre-white settlement plant communities, like this, experienced light to moderate intensity wildfires every 10 to 30 years. These fires limited juniper and brush competition and favored native bunchgrasses and other forage species. As a result of decades of fire exclusion, vegetation on this parcel is shifting toward juniper and decadent brush domination. Thermal and hiding cover for mule deer are increasing at the expense of forage. This shift has gone beyond the optimal balance between cover and food for deer and for most native wildlife species. Invasion by non-native plants, especially cheat grass, near roads and other areas of human activity, is increasing and further damaging the composition and productivity of this native plant community.



According to the USDA Natural Resources Conservation Service soil survey this property is capable of producing approximately 850 air-dried pounds per acre per year of biomass. Currently, juniper and unusable sagebrush account for approximately 650 pounds per acre per year of biomass growth. Browse accounts for approximately 150 pounds per acre per year. Ponderosa pine accounts for 50 pounds or less per acre per year.

Juniper is the most common and an increasing tree species on this property. It is not usually considered to be a commercial species, however, it does have low-value markets as firewood, fence posts, and craft woods. Realizable (net of foliage, limbs, and tops) and sustainable juniper harvest on this property is approximately one-fifth of a cord per acre per year.

Sagebrush, bitterbrush, and Idaho fescue are the main sources of forage on this property. Range and forage conditions are fair and declining, due mostly to increasing competition from juniper and aging sagebrush. At most half of the 150 pounds per acre per year of forage production can be utilized for grazing in order to carry healthy, perennial plants into subsequent growing seasons. Thus, the sustainable carrying capacity of this property is approximately 3 animal unit months (AUM's). This would feed one cow and calf or 5 sheep for 3 months. Alternatively, it is capable of feeding approximately four wintering deer (December through April).

Ponderosa pine is the only native, commercial tree species capable of growing on this property. There are approximately 30 to 40 ponderosa pine trees on this property and none of them are of sufficient size and quality to be economically harvestable. These trees range from approximately 50 to 180 years of age. They occur on deeper pockets of soil and especially in locations with north-facing slopes and topographic shade. These trees have survived near the minimum moisture limit for ponderosa pine. Mortality is high and undesirable growth characteristics, including multiple tops, sweep, and spiral grain are common defects. Few of these trees are capable of reaching merchantable size, even if competing vegetation is removed, because they outgrow their available water supply as they approach merchantable size. During my inspection of this property, I found no stumps, logs, tops or other indications that commercial logging has ever occurred here. The Oregon Department of Forestry considers 20 cubic feet per acre per year to be the minimum threshold for commercial timber production. Potential growth here is 2 to 3 cubic feet per acre per year, under normal condition. Properties, like this, are not considered to be commercial forestland under Oregon Forest Practices Regulations and reforestation and other commercial forest practices requirements do not apply to sub-marginal sites, like this.

### Management Costs and Potential Income

Net income potential from this property is negative. Private land grazing rights sell for approximately \$10 per AUM. The 3 AUM's per year available here are not worth using, considering costs. Juniper firewood stumpage sells for approximately \$5/cord on properties with good access. Access to juniper here is difficult, except for areas close to Sisemore Road and the primitive road near the southern boundary of the parcel. A firewood cutter might be willing to remove juniper with an all-terrain vehicle (ATV) within 500 feet of these roads for no net cost. This could reduce the excessive number of juniper on 40% of the property for administrative costs only. Currently and for decades less than one log truck load of ponderosa pine logs will be available for harvest from this property. Such a harvest will not cover logging and haul costs to the nearest mill (now Interfor Pacific in Gilchrist).

Management costs for meeting wildlife habitat requirements on this property are speculative without an approved management plan. Improving and maintaining winter deer range would be the primary goal. This would entail maintaining a reasonable amount of hiding and thermal cover, increasing the quantity and quality of winter forage (brush and early grasses and forbs), and reducing fire hazard to protect the improved habitat and nearby properties. Most property owners would select a minimum cost management program. Thus, relatively low-cost, high-benefit activities, like juniper removal and spot mowing of decadent brush would be favored. Piling and burning, lopping and scattering, and in safe situations broadcast burning would also be used to modify vegetation and to reduce fuel hazards. Use of mechanized equipment on this property is limited to approximately half of the area, due to rocky surface conditions and steep, erodible slopes. ATV's and small farm tractors can be used for skidding, piling, mowing, and fireline construction on easy ground. However much of the area will need to be treated with gentler, but more expensive, hand labor (chainsaws, loppers, shovels, etcetera). Diversity is desirable, so treatment intensity should be varied and not all acres need to be treated. I estimate that approximately \$15,000 in treatments would be needed, during the first few years to bring this property into good and reasonably fire safe winter range conditions and then approximately \$1,000 per year would be required for monitoring and maintaining these habitat conditions. This treatment would increase deer winter range carrying capacity by 4 to 6 deer. The net present value of these costs is approximately \$30,000 at a 6% real discount rate.

On balance, I believe that Tax Lot 300 currently has no net income potential. Adoption of the required habitat management plan would result in acceptance of the equivalent of a one-time, \$30,000 negative income by the undivided owners. This cost would be largely offset by relief from permitting and sale restrictions on Tax Lots 100, 200, and 300.

#### Highest and Best Use

Tax Lot 300 is zoned for forestry, landscape, and wildlife uses and developed uses of this property are prohibited. Therefore, I conclude that maintenance of this property in a natural forested condition is its highest and best use, even though this use would result in no or a negative income for this parcel.

#### Opinion of Value and Certification

A full appraisal of Tax Lot 300 as a separate parcel would be complex and expensive, due to the property's legal and cost/benefit ties to Tax Lots 100 and 200; unique land-use requirements; undivided ownership; and the lack of comparable sales. The unfulfilled requirement for an approved habitat management plan for Tax Lot 300 increases appraisal difficulty. The cost to complete a full appraisal for Tax Lot 300 would be difficult to justify, given the parcel's low economic and market value. Therefore, I am only offering some market observations and opinions of value here, based upon assuming that forest management (open-space) is its highest and best use and upon my experience with appraising forested properties with little or no income potential.

In my experience Eastern Oregon "forestland" properties, which have little or no income potential and little or no higher and better use (HBU) potential, sell for approximately \$100 per acre. Isolated "scablands" are typical examples of these properties. Scablands contain very shallow, rocky soils. They are usually capable of growing a few, isolated trees and usually do

not produce enough forage to make livestock grazing worthwhile. These properties usually have very little HBU potential, when they are in isolated locations. Forested in-holdings located deep within Federal wilderness areas are another example of this type of property. Federal regulations and lack of access prevent most economic uses of these parcels. The motivation for owning properties with no significant economic return is often described as “pride of ownership.”

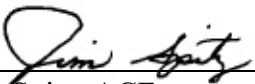
In my experience minority interests in properties with undivided ownership usually sell at a discount of 40 to 60%. In this situation minority owners have no say in management of the property, unless they can combine into a majority vote. A 50/50 ownership situation, as exists on Tax Lot 300, is especially difficult. Either party can block action by disagreeing.

In my opinion the market value of Tax Lot 300 as a separate property without an approved management plan was \$3,000 on January 1, 2013. This is based upon a land value of \$225/acre (less isolated than typical no-income/HBU properties and good mountain views from a few locations) and a 60% discount for ownership and management plan difficulties (more difficult than typical).

The current situation could change in the future and this might affect the market value of Tax Lots 100, 200, and 300. Agreement on a management plan for Tax Lot 300 is possible. Some or all ownership interests in Tax Lot 300 might be sold or donated to a third party. Regulations affecting these properties might be changed. The fact that 34 years have passed without development of an approved management plan for Tax Lot 300 or finding alternate solutions shows difficulties with all of these possibilities and impasse does delay significant costs and work for the landowners.

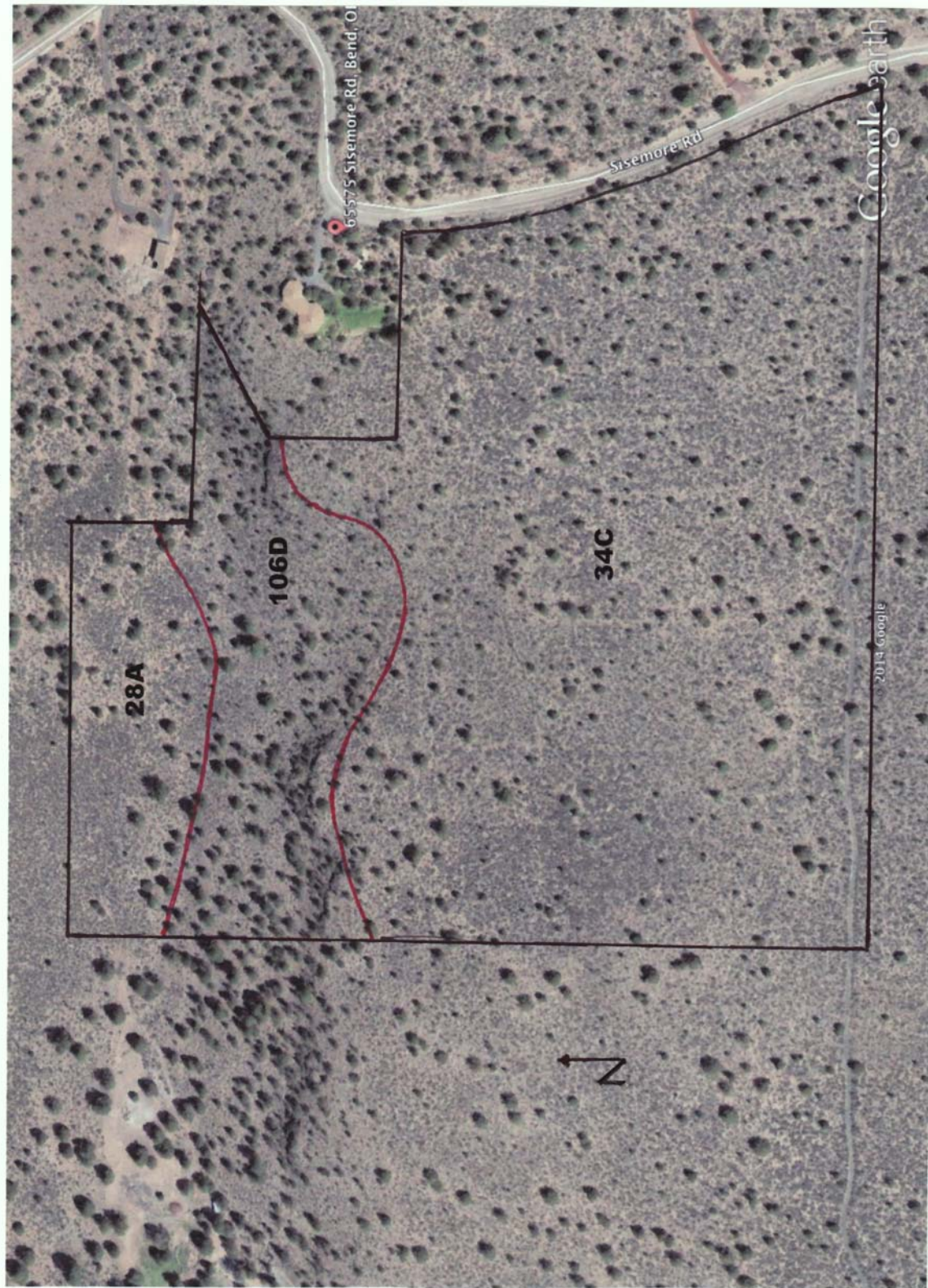
Based upon this analysis, I conclude that Tax Lot 300 had a market value of \$3,000 (\$1,500 attributable to each family) on January 1, 2013. I hereby certify that:

1. I have no undisclosed interest in this property, present or contemplated.
2. My employment and payment are not contingent upon the value found.
3. I personally and thoroughly inspected this property.
4. According to my knowledge, everything contained in this report is true, and no important facts have been withheld or overlooked.
5. No one provided significant professional assistance to me in developing this opinion of value or report.
6. In my opinion the market value of Tax Lot 300 was \$3,000 on January 1, 2013.

  
\_\_\_\_\_  
Jim Spitz, ACF

July 12, 1014  
\_\_\_\_\_  
Date

# Tax Lot 300 Soil Complexes and Vegetation



**Tax Lot 300 Soils**

	28A	106D	34C
Map unit symbol			
Map unit name	Clovkamp loamy sand, bedrock substratum, 0 to 3% slopes	Redslide-Licksillet complex, 10 to 30% north slopes	Deschutes-Stukel complex, 0 to 15% slopes
Acres	3.07 acres	5.30 acres	24.84 acres
Setting	Bottom-land lava plain	North facing slope	Slope-top lava plain
Parent material	Volcanic ash over gravelly alluvium - deep but sun exposed	Volcanic ash over volcanic rock colluvium – shallow but shaded	Volcanic ash over basalt – shallow and sun exposed
Depth to bedrock	40-50”	7-34”	17-31”
Water storage	About 4.4”	About 2.4”	2.2-3.7”
Natural drainage class	Somewhat excessively drained	Well drained	Well drained
Erosion hazard, natural	Slight	Moderate	Slight
Fire damage potential	High – wind erosion of sandy soil	Moderate	Moderate
Mechanized equipment operability	Well Suited	Moderate	Moderate
Land capability class, non-irrigated	6s – Very low productivity without irrigation & cultivation	6e – Very low productivity, unsuitable for cultivation	6e – Very low productivity, unsuitable for cultivation
Ecological Site	Juniper shrubby pumice flat	Juniper shallow north	Juniper shrubby pumice flat
Forest Site Class	Non-forest	Non-forest	Non-forest
Total vegetation production, normal yr <sup>1</sup>	900 pounds/acre/year	1,035 pounds/acre/year	818 pounds/acre/year
Total palatable forage production, normal yr <sup>2</sup>	150 pounds/acre/year	200 pounds/acre/year	150 pounds/acre/year
Notes:			
From USDA Natural Resources Conservation Service National Cooperative Soil Survey, unless otherwise noted.			
<sup>1</sup> Includes woody and other non-palatable material.			
<sup>2</sup> “Plant Associations of the Central Oregon Pumice Zone,” by Dr. Leonard Volland, USDAFS, 1982, adjusted for fair condition.			

**Photos of Soil Complexes 28A and 106D Vegetation**



**Photos of Soil Complex 34C Vegetation and Sisemore Road Access**



**Photos of Ponderosa Pine on Soil Complexes 106D and 34C, Respectively**





# Professional Qualifications of Jim Spitz, ACF

60045 River Bluff Trail, Bend, OR 97702

541/389-5978 – jspitz@bendcable.com

## Education

Graduate, Tropical Dendrology Course, Centro Cientifico Tropical, Costa Rica, 1995.

Graduate, Forest Engineering Institute, Oregon State University, 1974.

Master of Business Administration, Forest Industries Program, U of Oregon, 1972.

Bachelor of Science, Forest Management, Oregon State University, 1967.

## Work Experience

Forest Industries Consultant, 1979 to Present

Now assisting clients with the acquisition of and management planning for 180,000 acres of timberland in Eastern Oregon.

Now helping with revising the valuation chapter in the classic textbook, Forest Management.

Served as an expert witness on forestry and wood product matters in Federal Court of Claims cases, which resulted in settlement payments of over \$300 million to my clients.

Appraised over 1,000,000 acres of timber and timberland in Oregon, Washington, and California for purchases, sales, exchanges, divorce settlements, estate settlements, insurance settlements, lawsuits, foreclosures, and criminal cases, including:

- Appraised stumpage on the 125,000-acre Crown Pacific/US Forest Service Land Exchange in Central Oregon, 1996-98.
- Appraised stumpage on 3,000 acres of Bureau of Land Management Lands in the Cashe Creek Exchange in Northern California, 1997 & 98.
- Appraised stumpage on approximately 23,000 acres of Bureau of Land Management Lands in the Orwick Exchange in Northern California, 1996 & 97.
- Appraised stumpage on the 35,000-acre Cedar River Watershed Land Exchange (City of Seattle & U.S. Forest Service), including prescribing management for late successional ecosystems on selected areas, as required in the enabling legislation, 1995.
- Appraised stumpage on the 10,500-acre Oregon holdings of Plum Creek Timber Company as a basis for their sale, 1989.
- Appraised stumpage on the 15,000-acre Gilchrist Timber Company/U.S. Forest Service Land Exchange, 1987.
- Appraised stumpage on the 4,500-acre Galesville Reservoir site for purchase and condemnation, 1983.
- Provided domestic and export sort timber cruises and stumpage appraisals for over 100 smaller projects.

Completed numerous appraisal reviews for compliance with USPAP and Federal requirements.

Served on a stumpage appraisal committee, which determined stumpage transfer prices for over 200 million board feet of timber in Northeastern Washington.

Helped two logging companies and one timber purchaser monitor their costs, bid for logging and stumpage contracts, and complete thinning for forest health and fuels abatement in Central Oregon during the late 1980's and early 1990's.

Advised numerous investors and financial institutions on potential investments in timberland, forest product manufacturing facilities, and forest products wholesaling and retailing companies.

Served as the primary, independent advisor to the CEO and Tribal Council of the Confederated Tribes of Warm Springs from 1988 to 2010 on management of their 400,000-acre forest and 45 to 100 million board feet per year sawmilling, plywood manufacturing, cutstock manufacturing, chipping, and log merchandizing operations, including:

- Monitored day-to-day forest management operations and provided ongoing recommendations for procedural improvements.
- Helped analyze and plan for tribal assumption of control and redirection of their forest management program.
- Participated in the design and implementation of a turn-around of the wood products operations, which greatly improved profitability in less than 1 year.
- Participated in the development of a 10-year, integrated, forest management plan and the associated environmental assessment and timber harvest schedule.
- Recommended and helped implement new timber harvest priorities, utilization standards, marketing methods, and appraisal systems, which greatly increased stumpage revenue.
- Coordinated analysis of the plywood manufacturing and large-log sawmilling operations and then the design of a new 50 mmbf per year, medium-log sawmill, which replaced them.
- Developed analyses of millwork, wood chip, and sort yard opportunities.
- Helped identify opportunities and assisted with timberland acquisitions.

Developed a marketing guide for value-added wood products in the Southwestern U.S., which identified local market opportunities, entry points, channels of distribution, and key contacts for potential suppliers.

Helped design and coordinated work on a \$3/4 million national and regional study of forest product markets and business opportunities.

Inventoried forest resources and assessed the environmental and economic potential of 38,000 acres of tropical rainforest in Belize.

Helped review management of a 60 million board feet per year log merchandizing operation to evaluate past financial performance and to identify ways to improve economic return.

Conducted Forest Stewardship Council and Sustainable Forestry Initiative certification assessments and peer reviews of certification assessments in the Western U.S. and Lake States. Completed numerous FSC chain-of-custody certifications of forest product manufacturers, wholesalers, and retailers in the Western U.S. and British Columbia. Served as a technical advisor in developing FSC Rocky Mountain regional certification standards.

Assessed damages, developed rehabilitation plans, and provided expert witness testimony in numerous fire-damage cases.

Served as forestry and valuation advisor in a lawsuit, which resulted in an award of \$20 million in damages from improper timber sale layout, marketing, administration, and other mis-management.

Coordinated work on the 1993, Congressionally-mandated, national assessment of the condition of Indian forest lands and their management programs (IFMAT 1). This project included:

- On-site reviews of 33 Indian forests and management programs and representative samples of the national and regional offices of the Bureau of Indian Affairs.
- On-site reviews of 7 tribal sawmills and numerous cutstock, post and pole, shake and shingle, pallet, particleboard, log chipping, log sort yard, and other wood product manufacturing operations.
- Use of questionnaires, focus groups, and personal interviews to survey tribal communities and resource managers.
- Comparison of forest management practices and costs on Indian lands with those found on similar Federal, state, and private lands.
- Preparation of a report, two summaries, and an oral presentation to the U.S. Congress.
- Education of tribal resource managers, officials, and interested members on findings and recommendations from the study.

Served as an expert witness on general forestry, logging systems, and forest economics in U.S. District Court in USA vs. Link and USA vs. Elder, timber theft cases.

Served as an expert witness on helicopter logging, logging safety, and rights-of-way in U.S. District Court in USA vs. Hemstreet et. al., a logging protest case.

Provided technical guidance for the development of integrated resource management plans and environmental assessments for over 1 million acres of forestland.

Developed a transportation plan for a 600,000-acre forest.

Developed an intensive fish and wildlife management plan for a 70,000-acre forest.

Testified to the U.S. Senate Select Committee on Indian Affairs on the status and quality of management of Indian forests.

Participated in a study to determine the most efficient ways to log small timber and to produce in-woods chips.

Completed a raw materials supply study and a preliminary feasibility study for a proposed biomass power plant.

Developed environmental assessments for microwave relay stations.

Identified and analyzed potential socio-economic affects on local communities and industries of proposed forest and grassland management programs.

Developed draft policy guidelines for a geothermal exploration and development program.

Oversaw logging on a 22,000-acre ranch on behalf of the owner and lender.

Helped a city acquire 1,000 acres of land for construction of a sewerage treatment facility.

Taught classes to forest industries and appraisal professionals on forest industries evolution, investment opportunities, certification programs, and appraisal of timber and timberland.

Conducted tree farm inspections as a volunteer for the Oregon Tree Farm System.

#### U.S. Army, 1967-1970

Taught surveillance, interview, interrogation, and investigative techniques.

Served as a counterintelligence special agent and managed counterintelligence operations in South Korea for the Eighth Army.

#### U.S. Forest Service, 1962 to 1979

Worked in the following permanent and seasonal positions: systems analyst, program of work analyst, forest management planner, other resources manager timber sale administrator, presale forester, reforestation forester, and forest pathology research technician. Presale forestry included substantial experience in timber cruising, design, and layout of logging units and roads, mostly on sensitive sites using advanced cable and aerial logging systems.

### **Partial List of Consulting Clients**

Plum Creek Timber Company  
Rough & Ready Timber Company  
Gilchrist Timber Company

Broughton Lumber Company  
Thomas Lumber Company  
Niedermeyer-Martin

Capital Veneer Sales	Modoc Lumber Company
Kinzua Timber Company	Day River Partnership
Crown Pacific, LLP	Northwest Agri-Tech
Giustina Resources	G Bar W Ranch
Fishhole Creek Ranch	Forked Meadow Ranch
Box T Ranch	Salt Creek Plantation
Jeld-Wen Timber and Ranches	Lassen Gold Mining
Oregonians in Action	Wilson Logging
Smith-Greene Logging	Wissie Inc.
The Timber Exchange	Dixie Chemical Company
Interforest, LLC	Centro Cientifico Tropical
Jay Gruenfeld & Associates	Moana Corporation
Travelers Insurance	North Pacific Insurance
Farmers Insurance	GAB Robbins
Union Oil of California	MCI Telecommunications
Seattle Water Department	Sunriver Utilities
U.S. National Bank	Oregon Bank
Wall Street Financial Corp	Viking Community Bank
Soros Funds	Deutsche Bank
Goldman Sachs	Brencourt Advisors
Greywolf Capital	Seneca Capital
Oaktree Financial	Amaranth Advisors
Polygon Investments	Taconic Capital
Gerson Lehrman Group	Triarc Companies
Basso Capital	Luxor Capital
Avenue Capital	Rockybay Capital
MFS Investments	Silver Point Capital
QVT Financial	Stark Investments
Empyrean Capital Partners	TIAA-CREFF
Fidelity Investments	Endowment Management, LLC
Perry Capital	Eaton Park
TPG Axion Capital	Ziff Brothers Investments
Och-Ziff Capital	Di Maio Ahad Capital
GLG Inc. US	Greenlight Capital
JP Morgan	MFS Investments
Canyon Capitol Advisors	Alliance Bernstein
Glenview Capital	Quadrangle Group
Watershed Asset Management	Old Lane
KS Capital Partners	DE Shaw Company
Atlantic Investments	Bain and Company
Barrington Capital	Blackport Capital
Centerbridge Partners	Chisuk Yom
Davidson Kemper	Fortress Investment
Generation Investment	Golden Tree Associates
GSO Capital	KBK Investments
Highbridge Capital	King Street Capital
Kolberg Kravis Roberts	Lehman Brothers
Morgan Stanley	MSD Capital
Obrem Capital Management	OSS Capital
Redwood Capital	Rockcrest Capital
SAC Capital Advisors	Sage Asset Management
Sankaty Advisors	Satellite Assets
Thales Fund Management	Tisbury Capital
Wellington Management	Wesley Capital Management
Ridgetop Research	The Equity Group
Trellus	Community First Bank
Arneson, Wales & Bernier	James, Denecke & Harris
Karnopp, Peterson, Noteboom, ...	Brandsness, Brandsness, and Rudd

Forcum & Speck  
Trust for Public Land  
Western Land Group  
North Coast Conservancy  
Forest Stewardship Council, U.S.  
Girl Scouts of America  
Confederated Tribes of Warm Springs  
Confederated Tribes of Colville  
Yakima Indian Nation  
First Nations  
Intertribal Timber Council  
Applegate Forestry  
City of Detroit, Oregon  
City of Sisters, Oregon  
City of Idanah, Oregon  
Douglas County, Oregon  
Oregon Department of Transportation  
Oregon Department of Revenue  
Bonneville Power Administration  
Federal Public Defender  
U.S. Army Corps of Engineers  
U.S. Bureau of Land Mgmt, National  
U.S. Bureau of Land Mgmt, California  
Region 5, U.S. Forest Service  
Deschutes National Forest  
Winema National Forest  
Siuslaw National Forest  
U.S. Senate  
Occasional Small Woodland Owners

Lands of America  
Pacific States Marine Fisheries Commission  
Wetlands Conservancy  
Oregon Water Enhancement Board  
Scientific Certification Systems  
RREDCo  
Klamath Tribes  
Confederated Tribes of Grand Ronde  
Redding Rancheria  
Coeur 'd Alene Tribes  
Quinault Indian Nation  
City of Depoe Bay, Oregon  
City of Madras, Oregon  
Bend Metro Parks & Recreation District  
Marion County, Oregon  
Oregon General Services Administration  
Oregon Department of Forestry  
Washington Department of Natural Resources  
U.S. Department of Energy  
Columbia River Gorge National Scenic Area  
U.S. Fish and Wildlife Service  
U.S. Bureau of Land Mgmt, Oregon  
Region 6, U.S. Forest Service  
Willamette National Forest  
Mt. Hood National Forest  
Fremont National Forest  
Siskiyou National Forest  
Canadian Consulate

## **Professional Memberships**

Association of Consulting Foresters  
Society of American Foresters  
International Society of Tropical Foresters  
International Wood Collectors Society  
Central Oregon Rock Collectors

**6/2014**

## Civility & Home Associations, The Secrets to Success

By [Teresa Payne CMCA AMS Owner of Fieldstone Management LLC](#) on April 23, 2015 [E-Headlines](#)

Homeowner associations (HOAs) are non-profit corporations where ALL owners are members. One of the biggest advantages of living in an HOA is the ability of the association to preserve, protect and enhance property values.

The secret to a successful HOA is that each member acknowledges their role in the community and at times be willing to take on some added responsibility.

Recently I helped a client community transition from self-management to professional management. Kudos to them! Even the smallest HOAs can be a challenge to self-manage. When my associate and I attended our first board meeting for this community, a man asked us, "Did the board hire you because they're incompetent?"...unfortunately at the time I didn't think to say, "No – Your board hired us because they ARE competent."

This experience led me to think about a greater concern in our society of HOAs: RESPONSIBILITY. Who is responsible for maintenance of our homes? Our landscape? Who is responsible for our behavior? What does your neighbor think of your behavior and what do you think of theirs?

HOA boards and managers have to handle a surprisingly wide variety of situations. We regularly deal with owners who have a bone to pick about a neighbor's behavior. Sometimes, two neighbors just don't like each other and will always find something to report to the manager or board.

"My neighbor parks his car in front of my house so now it's what I see when I look out my window."{

"Can you make kids stop running across my front lawn."

"The street light shines in my bedroom and I can't sleep, so please fix it NOW."

"There's a dog chasing a deer, you need to do something."

"My neighbor's tree roots are growing over into my property."

"My girlfriend is allergic to bees. Please remove all the flowers so she doesn't get stung."

Associations aren't always responsible for solving problems. If an owner's behavior doesn't violate the governing documents, then the board generally has no business butting in. Whatever the complaint, the first question we ask is – have you talked to your neighbor?

A lady from that same community walked into our office and said, "I'm here to work in my office." She brought in her work and sat down at our conference table and said, "You changed our HOA address and therefore this is MY office."

Well, technically the address was changed to a PO Box, so go right ahead and set up shop down there!

Despite the horror stories and critics, it's obvious many people appreciate the way HOAs operate. Why else would 20 percent of the population voluntarily place themselves under their control?

When you purchase a home in an HOA you automatically become a member of the association and are bound to deed restrictions, covenants and conditions (CC&Rs). These rules and restrictions are to protect the community and to maintain or improve property values.

Lastly, I leave you with some thoughts on How to Create a Strong Community:

You all must obey your governing documents; you agreed to do that when you closed escrow. By obeying community rules and regulations, you contribute to your community and accept the role of a rule abiding member. Each year you conduct an annual meeting at which time you elect your board of directors. Although you don't have to participate

in the election process, choosing to do so contributes to the success of your community.

Your role as a rule abiding member expands to include that of a voting member. You also have the opportunity to attend your board of directors meetings in order to better understand the business decisions made by the board. When you choose to attend those meetings, your role as a rule abiding, voting member now expands to include that of a participating member. And when you choose to serve on community committees or the board of directors, you accept another role and become a rule abiding, voting, participating and contributing member.

Volunteering for your HOA Board and living in an HOA should be a rewarding experience and we urge every board – no matter how small – to have a relationship of some sort with a professional manager.

Fieldstone Management strives to find the most effective solutions to the challenges faced by community associations. We hope that in your process of promoting peace and aesthetics in your community, your property values are protected.

Teresa Payne, CMCA, AMS is the owner and general manager of Fieldstone Management, LLC located at 371 SW Upper Terrace Drive, suite 2, Bend, OR. 541-385-7799

Fieldstone Management is a bonded, licensed property management company specializing in the management of community associations. We offer full service association management, consulting, and education for communities. Fieldstone is a member of CAI (Community Associations Institute).

[www.fieldstonemanagement.com](http://www.fieldstonemanagement.com)





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**MINUTES OF BUSINESS MEETING**  
**DESCHUTES COUNTY BOARD OF COMMISSIONERS**  
**MONDAY, JANUARY 7, 2008**

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Commissioners' Hearing Room - Administration Building - 1300 NW Wall St., Bend

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*Present were Commissioners Dennis R. Luke, Michael M. Daly and Tammy Baney. Also present were Laurie Craghead, Legal Counsel; Catherine Morrow, George Read, Will Groves, Anthony Raguine and Chris Bedsaul, Community Development Department; and approximately a dozen other citizens.*

*Chair Luke opened the meeting at 10:00 a.m.*

**1. Before the Board was Citizen Input.**

*None was offered.*

**2. Before the Board was a Public Hearing and Consideration and First and Second Readings and Adoption, by Emergency, of Ordinance No. 2008-003, regarding a Zone Change (Applicant: Reid).**

Will Groves explained the item, which was requested by the applicant. The Hearings Officer concluded split zoning of property in 1992 was a mistake, as it was based on a section line. She recommended approval under one type of zoning. The applicant has asked for an emergency clause because it took an inordinate period of time for the Hearings Officer to hear this case, and the owner would like to proceed with other applications regarding the property.

Laurie Craghead stated that this is an individual case and not a legislative change, and the Board often allows these to be handled on an emergency basis.

Chair Luke opened the public hearing, and read the opening statement.

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VOTE: DALY: Yes.  
BANEY: Yes.  
LUKE: Chair votes yes.

**4. Before the Board was Consideration of Whether to Hear an Appeal (File #A-07-21) of the Hearings Officer's Decision Revoking Land Use Approvals for the Construction of a Dwelling (Applicant: Peery).**

Anthony Raguine provided an overview of the item. He said there was a Code complaint regarding retention of vegetation filed by a neighbor; it was determined that a violation did occur, and there was a declaratory ruling to revoke two of the permits issued in June 2007. In November the Hearings Officer revoked all four permits, and this has been appealed. There is no time constraint, and the appellant asked for a de novo review. The applicant has been working with the Oregon Department of Fish & Wildlife on this issue. Mr. Raguine referred to an oversized map and explained where the dwelling would have to be built. If approvals are revoked, they would have to build where an old irrigation ditch was located, and the Oregon Department of Fish & Wildlife does not want it built there due to the existence of a wildlife game trail and corridor. Restoration would also need to be done.

The original approval includes a modification of conditions. The previous owners had applied for a site away from Sisemore Road.

Ms. Craghead noted this was a violation of the original conditions of approval. If the County revokes all permits, the owners can still build but the structure might be where the Oregon Department of Fish & Wildlife does not want them to be, and also mitigation with the County would not be required.

Mr. Raguine stated that originally Community Development revoked two conditions; the Hearings Officer revoked all four. The County could require more trees to be planted for screening, but there is no requirement to restore the site if the permits are revoked. Staff agrees with the Hearings Officer in this case.

Laurie Craghead stated that this could be heard de novo, limited de novo or on the record. Ms. Raguine advised that the applicant is working with the Oregon Department of Fish & Wildlife. However, not hearing the appeal would send a clear message that people are not to violate conditions, but on the other hand this would not allow the County to require mitigation efforts.

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Commissioner Baney agreed that conditions of approval should be followed, but thinks this one should be heard to have an opportunity to mitigation some damage that has already been done. Commissioner Daly agreed, in an effort to try to make the best of a bad situation.

Chair Luke noted that they took out material on the neighbor's lot as well. He thinks their permits should be revoked. They will have to reapply and he feels they can be made to mitigate some conditions at that time.

Commissioner Baney stated that she feels it should be punitive, but the County may not be able to require mitigation if the four permits are revoked. Ms. Craghead said it depends on where they plan to build. There might be a way to get some mitigation. The house would also have to be screened. Commissioner Luke said that ODF&W will have an opportunity to comment on a new application.

Commissioner Daly stated that the applicant is working with the Oregon Department of Fish & Wildlife now, and he would like to hear what they have worked out.

DALY: Move that the Board hear this de novo.

BANEY: Second.

VOTE: DALY: Yes.

BANEY: Yes.

LUKE: Chair votes no. (*Split vote.*)

**5. Before the Board was Consideration of Whether to Hear an Appeal (File #AD-07-12) of the Hearings Officer's Decision regarding a Utility Facility, Including AM Radio Towers, in the EFU Zone (Appellant: Follansbee).**

Dee Van Donselaar said there are fourteen appellants in this issue. There has been no offer to extend the clock by the applicant.

Laurie Craghead said that a minimum of a week would be required to get a decision finalized. The mailing takes ten days. Commissioner Luke stated that it appears that there is not enough time to hear this in the amount of time allowed, especially since some of the Commissioners will be out of the office part of the time, so he feels it should be appealed to LUBA if the appellants so desire.

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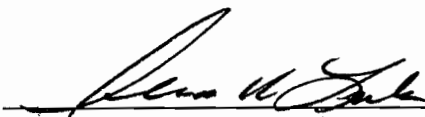
VOTE: DALY: Yes.  
BANEY: Yes.  
LUKE: Chair votes yes.

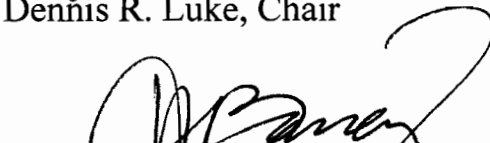
**7. ADDITIONS TO THE AGENDA**

*None were offered.*


*Being no further items to come before the Board, Chair Luke adjourned the meeting at 12:05 p.m.*

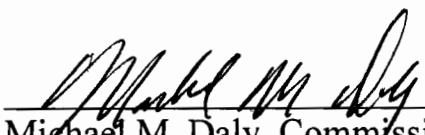
**DATED this 7<sup>th</sup> Day of January 2008 for the Deschutes County Board of Commissioners.**

  
\_\_\_\_\_  
Dennis R. Luke, Chair

  
\_\_\_\_\_  
Tammy Baney, Vice Chair

ATTEST:

  
\_\_\_\_\_  
Recording Secretary

  
\_\_\_\_\_  
Michael M. Daly, Commissioner

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