From: William Kuhn
To: Nick Lelack
Cc: Peter Gutowsky; Smith Sharon re Dowell
Subject: Re: Meeting with Sharon Smith
Date: Thursday, January 14, 2016 11:41:18 AM
Attachments: ATT00001.png
ATT00002.png

Hi Nick,

Please forgive my not responding sooner, we have been flooded with emails -- there are 110 left over from yesterday, and an additional 93 so far this AM. There are a lot of people asking for more information on our web-site. There was a spike in views last night and I still need to get originals of the video out to our neighbors.

Are you able to get the County Dial web-site of the Dowells property updated with the Appeal record and submissions from yesterday as soon as possible? It's one thing for us to post the documents on our web-site, but reporters, and government enforcement officials, they all want to see the County record on the County site.

This is urgent and time sensitive. Again, I fully understand just how 'swamped' you are. Maybe you need to raise your development fees to help pay for all the legal issues that seem to have befallen the County as a result of how poorly CDD was run under George Read's, Rick Isham's, and Dennis Luke's mishandling of past errors. I've said this before, County needs to hire more competent, AICP qualified employees. Just remember this, County could have and should have acted quickly and forcefully back in 1997 when we brought this issue to your attention.

Imagine if the Dowells had had Ms Smith as their attorney back in 1989. I'm willing to bet the Dowells won't have bought their property in the first place because Ms Smith would have pointed out to the Dowells -

1) you can't claim someone else's property in your purchase contract.
2) you can't eliminate the no-new-dog deed restriction in your purchase contract.
3) you don't want to buy this property without getting a lot line adjustment that will make the property build-able.
4) you need to buy title insurance. And then repeat that instruction a second time.
5) you need to better understand what those deed restrictions actually mean.
6) and MAYBE Ms Smith would have been able to point out the the Dowells that there was no homeowners association agreement.
7) and if Ms Smith were really good at her job she would have pointed out to the Dowells that owning joint property is an obligation that must be maintained equally and fairly. That development costs for the cluster needed to be agreed to in writing. That instead of the Dowells spending so much time hitting golf balls off the roof of their structure onto the common property, maybe instead the Dowells should go out and pull cheatgrass and harvest some juniper trees, and help reduce some of the fire-fuels.

When you read the depositions of Pat Dowell it is crystal clear that it was Jeff

Dowell who insisted on buying property within our cluster development. It was Jeff Dowell who insisted on doing just about everything associated with the property. Pat Dowell didn't know about his conspiracy with others to harass us through his FUD and his ugliness.

JUST maybe Ms Smith might have been able to convince the Dowells that Mr. Dowell's dream of an estate should be redirected elsewhere outside of the Tumalo Winter Deer Range.

I will forgo any other meeting, I will postpone any other urgent business necessary, but I think Tom Anderson at the very least needs to be at such a meeting.

I see from an email from you this AM that Ms Smith does not want the meeting videotaped. We will agree. But given that this is a meeting with all three parties we do think it wise to record the meeting. Is that acceptable? If not, then please provide an official note taker and then at the end of the meeting we can review the notes and each party can endorse what was communicated. We will also stipulate that ORS 40.190 Rule 408 will apply to the conversation.

We are willing to extend the record as long as there is some type of recording of the meeting, otherwise we will not agree to any extension.

To show that all three parties are willing to act together to solve the problem we propose the following: Because all three parties Kuhns, Dowells, and County Legal Counsel need a transcript of the hearing yesterday, to show that we would like to help work together towards a mutual solution to this ugly situation, we would like to offer that each pay 1/3rd of the cost of the transcript. Can we have agreement on that?

Lastly, please make this email chain a part of the record as a submission to be included in the Board's decision making process.

Thank you,
Bill

On 1/13/2016 5:49 PM, Nick Lelack wrote:

> Hi Bill,
> Yes, Sharon is willing and able to meet with us. She asked if you would be willing to extend the written record to Feb. 17 for new information, rebuttal to Feb. 24 and final arguments to March 2 in the event issues are raised at the meeting requiring more time for her and the Dowells to respond to in writing for the record.
> Sharon and I are available Thursday, Jan. 21 9:00-12:00 and 3:00-5:00, most of the day Friday, Jan. 22, and Monday morning, Jan. 25.
> I haven't checked with Tom yet on his availability to participate, but I expect his only availability during those times might be Thursday, Jan. 21 in the morning. His schedule may be the most challenging to accommodate.
> Thank you.
>
> **Nick Lelack, AICP, Director**
> **Community Development Department**

117 NW Lafayette, Ave. | Bend, Oregon 97703
Tel: (541) 385-1708 | Mobile: (541) 639-5585

Enhancing the lives of citizens by delivering quality services in a cost-effective manner.

--
William Kuhn
INVEST/O - Registered Investment Advisors
PO Box 5996
Bend, OR 97708-5996
541 389 3676
William@RiskFactor.com

"Illegitimi non carborundum" - refers to the continuing acts of Deschutes County

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

.

Attachment B

From:	William Kuhn
To:	Peter Gutowsky; Nick Lelack; Tom Anderson; Bonnie Baker; David Doyle
Cc:	Smith Sharon re Dowell
Subject:	Question from the Kuhns
Date:	Wednesday, January 27, 2016 10:59:33 AM
Attachments:	20160127 Clock or no clock Not record the map or record it Enforce side yard setbacks or not.pdf

Please see our attached question: 20160127 Clock or no clock.

Thank you

--
William Kuhn
INVEST/O - Registered Investment Advisors
PO Box 5996
Bend, OR 97708-5996
541 389 3676
William@RiskFactor.com

"Illegitimi non carborundum" - refers to the continuing acts of Deschutes County

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

.

William John Kuhn

Martha Leigh Kuhn

PO Box 5996 Bend, Oregon 97708-5996 Phone: (541) 389-3676

Wednesday 17 January 2016

Clock or no clock Not record the map or record it Enforce side yard setbacks or not Are they deed restrictions or are they the Homeowners Association Agreement?

Is there a Clock or not? The Kuhns must have an official answer by the end of the day today or extend the deadline for submissions which are due today:

At the hearing on Wednesday 13 January 2016 the Kuhns discovered that there was a challenge by the Dowells' attorney that there was an issue regarding the Clock.

Clock or no clock Deschutes County doesn't know what it's doing and isn't capable of untangling the legal mess it has created for itself by not acting quickly and promptly on the 15th of January 1997 when the Kuhns brought to the County's attention the lack of a homeowners association agreement that would allow the Kuhns to enforce the deed restrictions required by Deschutes County.

As far as the Kuhns are concerned the "Clock" has been running for 19 years and 12 days so far.

In early 2000 when the Dowells proved to the Kuhns that they were willing to lie in civil court as to when they knew or didn't know about the deed restrictions, the Kuhns filed complaints with George Read who received and commented on one of the code violations the Dowells had committed.

What happened next has repeatedly proven the point that Deschutes County was incapable of doing the right thing on an equal, fair, and unbiased way when viewing the unlawful development of the Dowells' property.

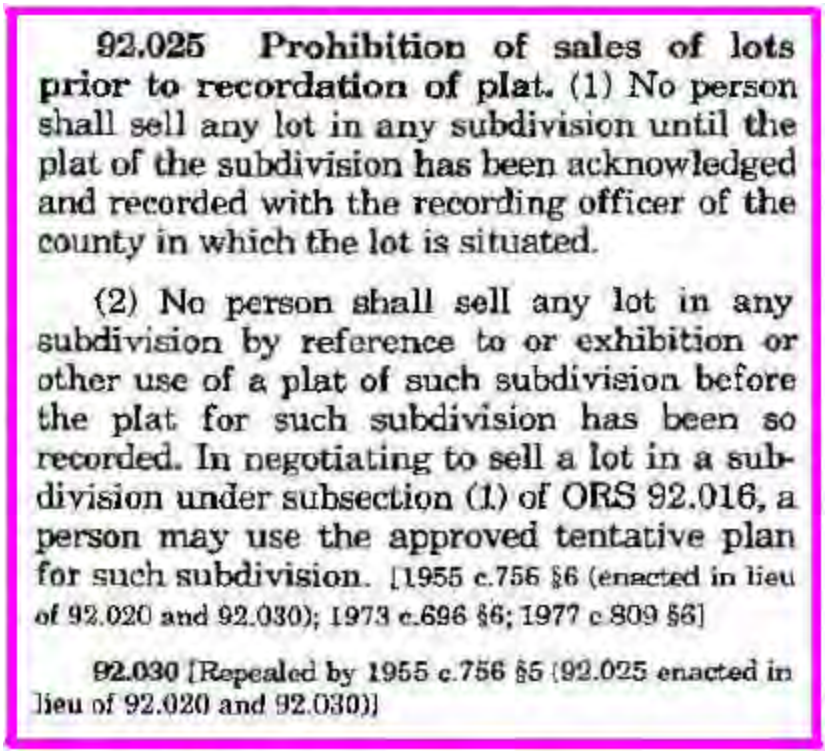
In 2000 George Read seemed incapable of withstanding arguments presented by the Dowells' attorney (who was ethically precluded from accepting the Dowells as his clients). Read also received poor oversight when Commissioner Dennis Luke, whose job it was to oversee CDD, made suppositional statements rather than directing Read to issue a ruling or findings on the issue. What Luke should have done is to direct Read to require the Dowells to ask for a DR or else issue his own DR to sort out the issue. This was followed by County Counsel Rick Isham's argument that the lines on the final partition plat map didn't have to be enforced because the map was never recorded by the Director of CDD back in 1980 as he was required to do.

Director Read failed to do his job correctly. Commissioner Luke aided and abetted Read with his poor oversight of CDD which was Luke's job in 2000. That others at the County now comment, it is not the way they would have handled it, or it doesn't cut it with them, is legally not enough for the

Kuhns. The County should admit these mistakes and correct them as they should have done immediately in 2000.

It took four years, but eventually the County changed its mind and recorded the map as a result of the Kuhns refusal to pay their property taxes until the map was recorded.

See Exhibit 1 -- ORS 92.025



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

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

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

Exhibit 1 -- ORS 92.025

But by that time the damage had already been done. During those years both County Legal Counsel and CDD Director gave false and misleading testimony to a judicial tribunal regarding whether the map had to be recorded or not which undermined the Kuhns' argument before the judge that the 400' map was required to be enforced.

Also, by that time several other legal decisions were in progress in both civil court and before the County Commission based on the County's own nonfeasance and misfeasance.

In 2001 Dowells apply for DR-01-5 followed by A-01-19 where the question asked was "What were the minimum side yard setbacks on the Dowell property in a Forest Zone?" That appeal was withdrawn because, as the Dowells' attorney admitted, it was bad lawyering on his part. But it did give Commissioners the opportunity to declare that the Dowells were welcome to reapply for another shot at the question.

In 2002 Dowells re-apply with DR-02-2 followed by A-02-7 for the same question. This second DR went against the Dowells because the Hearings Officer ruled it was the same question. But that

didn't seem to faze Dennis Luke and the others. They could and did make the political decision to ignore the law.

During this DR and the Appeal that followed, the Dowells' attorneys stretched out the process for over 2 years playing around with the concept of the clock.

See history of BLJ's excuses
20020710-20040806 Lovlien Requests To Postpone 27pages .pdf

2011 May – Tony DeBone asks Dowells' attorney at BLJ what's going on?
2011 June – Dowell signs application for DR
2011 December – Dowells submit application for DR-11-13
2012 May –Dowells withdraw DR-11-13

2013 June – Dowells apply again for DR-13-16 without paying the fee required
This again precludes the Kuhns from communicating with the BoCC further based on ex-parte contact.
2013 July – Dowells pay Hearings Officer fee.

Pick up here with this email exchange

From: William Kuhn [mailto:william@riskfactor.com]
Sent: Thursday, July 11, 2013 11:32 AM
To: Paul Blikstad
Cc: Nick Lelack
Subject: status of DR-13-16

Hi Paul,

Has there been any further communication regarding the Dowells' DR-13-16?

The public notice sign has still not been posted.

What is the termination date for this application?

Is the clock ticking for the County?

If there has been any written communication please forward a copy for our file.

What is the next expected activity or communication regarding DR-13-16?

Thank you,
Bill

William Kuhn
INVEST/O - Registered Investment Advisors
PO Box 5996
Bend, OR 97708-5996
541 389 3676
William@RiskFactor.com

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

----- Original Message -----
From: Paul Blikstad
To: 'William Kuhn'
Sent: Thursday, July 11, 2013 2:56 PM
Subject: RE: status of DR-13-16

I'm checking with Sharon on her availability for a hearing. The application will go to a hearing, so we will have them post the land use sign at least 10 days prior to the scheduled hearing. The 150th day would be November 29th. Yes the clock is ticking. I haven't sent out any notice, so there are no comments to date.

From: William Kuhn [mailto:william@riskfactor.com]
Sent: Thursday, July 11, 2013 5:42 PM
To: Paul Blikstad
Cc: _Leigh WRD@RF; Nick Lelack
Subject: Re: status of DR-13-16

Thank you Paul,

So, the clock began as of the date of the application, yet the last we heard is that they haven't paid for the hearing yet.
Has CDD received the check for the hearing's officer?
I do not see on line a receipt from CDD sent or given to the Dowells for their check for the hearing's officer. Can you please send a copy if there is one?

And what if we can't make the date that Sharon Smith picks for the hearing?

We respectfully wish to remind Deschutes County that DR-13-16 involves us at least as much as it involves the Dowells. These are our properties, our rights, and apparently we don't have a say as to when a hearing is going to be held.

We wish to remind CDD and Deschutes County that we on several occasions asked for declaratory rulings that involved the whole of our cluster to address, for example, the very basic question of "are our deed restrictions a homeowners' agreement" as early as January 1997, and Deschutes County, in the person of Kevin Harrison, simply shook his head and said no, that's not possible. We did do as was recommended and that was to

submit a formal letter of a code complaint which was ignored by Deschutes County. Please see attached.

We are again strongly objecting to the bias being shown by Deschutes County against us.

Please consider this a formal complaint of bias.

Respectfully,
William Kuhn
INVEST/O - Registered Investment Advisors
PO Box 5996
Bend, OR 97708-5996
541 389 3676
William@RiskFactor.com

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

----- Original Message -----
From: Paul Blikstad
To: 'William Kuhn'
Sent: Friday, July 12, 2013 7:56 AM
Subject: RE: status of DR-13-16

I sent the applicant an incomplete letter requesting the hearings officer deposit. As you can see from the attached receipt, the deposit came in on July 2nd, which is now the official "start date" of the application.

Are you going to be out of the area in August or September? If so, when?

From: William Kuhn [mailto:william@riskfactor.com]
Sent: Friday, July 12, 2013 11:22 AM
To: Paul Blikstad
Cc: Nick Lelack; _Leigh WRD@RF
Subject: Re: status of DR-13-16

Thank you Paul, for the opportunity to be considered when determining the general time frame for the hearing.

I have client visits scheduled for late July and early August and have travel plans from the second half of August through Labor Day.

In general after September 2nd is the best case option for us.

Paul, the mere fact that we have to ask CDD what is happening regarding this permit goes to bias. Were you going to allow the date for the hearing to be set without our input?

Regarding the 150 day rule:

Our understanding is that State law prescribes that all land use permits, limited land use permits, and zone change decisions in Oregon must be made within 120 or 150 days, depending on if the decision affects land inside or outside the urban growth boundary, from the date that the application is deemed complete. We also know that in the past Deschutes may have incorrectly interpreted that declaratory rulings are required to adhere to a tolling of the clock. Because a DR is NOT a land use permit issue, nor is it a zone change decision, we ask that you please quote ORS or other state law that requires a 150 day clock and your rationale for why the 150 day clock applies.

The l50 day rule is mentioned in Chapter 215 (215.427, 215.429 and 215.433). The definition section that applies to that part of the statute contains the definition of a permit. We do not see the words "declaratory ruling" mentioned as a "permit".

It is our belief that CDD was wrong in 2001 and 2002 regarding DR-01-5 and DR-02-2 because they were not applications for a "permit" (as defined by the relevant parts of ORS). We know that you agreed with us at the time that it was improper for the Dowells through Robert Lovlien to even apply for the second DR because, as you stated in your presentations, the question was the same as asked in DR-01-5 and therefore should have been precluded. Instead Commissioner Dennis Luke and County Legal Counsel made their own interpretations and allowed the DR to proceed. You will also remember that this was the DR where Mr. Lovlien dragged the process out over two years giving excuse after excuse for why he couldn't complete the findings, and Legal Counsel failed to blow the whistle on the situation until we wrote a letter of complaint to the County. Please see attached "20040706 ToBoCC ReLovlien..." and please be sure to include it in the documents submitted regarding this DR.

Because we believe the County should be precluding this application from being heard in the first place as we previously communicated to Deschutes County, we respectfully request that Deschutes County CDD and Legal Department state your rationale in writing for why the 150 rule applies, PRIOR to the hearing to give us sufficient time to respond before the hearing begins.

Thank you,

Bill
William Kuhn
INVEST/O - Registered Investment Advisors
PO Box 5996
Bend, OR 97708-5996
541 389 3676
William@RiskFactor.com

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

On 7/15/2013 12:55 PM, Nick Lelack wrote:

Hi Bill,

We agree with you that this application is not subject to the 150-day deadline because it is not for a "permit" but rather an interpretation.

Thank you.

_____

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

Clock or no clock Not record the map or record it Enforce side yard setbacks or not Are they deed restrictions or are they the Homeowners Association Agreement? Why weren't BOTH required before purchase?

Is there a Clock or not? The Kuhns must have an official answer by the end of the day today or extend the deadline for submissions which are due today:

Because Deschutes County and the Dowells and the Dowells' attorneys are keeping us from refinancing our loans - if there is no decision by Deschutes County today we will move up our filing a complaint with the Oregon Division of Securities Corporate Division.

Exhibit #2 follows as: 20020710-20040806 Lovlien Requests to Postpone 27pages .pdf

20020710-20040806 Lovlien Requests To Postpone 27pages.pdf

Liz Fancher's communication to BoCC
regarding Lovlien and
the release of A-02-7 Decision

It was two years ago that Mr. Lovlien was asked to write the decision for the BoCC regarding A-02-7, an appeal of Declaratory Ruling DR-02-2.

There have been nine (or ten) requests (please see attached) for extensions of the 150-day clock for the Dowells' Appeal of DR-02-2 (originally heard 29 August 2002) regarding side yard setbacks.

Based on Mr. Lovlien's language of the last two requests for extending the 150-day clock he has completed his work of writing the decision for the BoCC, but is choosing not to release the decision. QUOTE: "I am still reluctant to release the decision until we have some feel for where the Court of Appeals is going on the matter."

Attached is an email from Jerry Martin, civil attorney for the Kuhns. Mr. Martin says, "As you know oral argument has not been set for the Court of Appeals case involving the Dowell property. Based on recent information from the Court the argument will probably be in October (2004). Experience tells me that it might be up to a year (October 2005) or more after argument before we receive the decision." Limping along at 30-day extensions at a time is ludicrous.

Are we to assume that Mr. Lovlien wants to wait until October 2005 to submit the Board's decision?

The issues in front of the Court of Appeals from the Civil Court case Mr. Lovlien refers to are not in any way the same as the issues in the declaratory ruling and appeal. What exactly is it that Mr. Lovlien sees as a connection? Is Mr. Lovlien so concerned with the decision made by the Board that he is afraid to proceed and have the decision be appealed to LUBA?

Continuing to delay releasing the written decision in this manner is blatantly abusing the legal system. The 150-day rule is not meant to be used in this manner. It has passed way beyond ridiculous. There is no reason for this withholding of filing the decision Mr. Lovlien was asked to write, other than thinking he can make a mockery of procedural rules.

Justice delayed is justice denied.

Post-it® Fax Note 7671	Date 7/18/02	# of pages ▶ 1
To William Kuhn	From Laurie C.
Co./Dept.	Co. Legal Counsel
Phone #	Phone # 388-6593
Fax # 383-6883	Fax # 383-0496

RECEIVED
JUL 10 2002
DESCHUTES CO. LEGAL COUNSEL

BRYANT, LOVLIEN & JARVIS, PC
ATTORNEYS AT LAW
ESTABLISHED 1915

Neil R. Bryant
Robert S. Lovlien
Lynn F. Jarvis
John A. Berge
Sharon R. Smith
John D. Sorlie
Mark G. Reinecke
Melissa P. Lande
Kitri C. Ford
Lane D. Lyons, LL.M.
Jennifer A. Allen

BEND
591 S.W. Mill View Way
Mail: P.O. Box 1151
Bend, Oregon 97709
Phone: (541) 382-4331
Fax: (541) 389-3386

MADRAS
24 S.W. Fifth Street
Mail: P.O. Box 650
Madras, Oregon 97741
Phone: (541) 475-2757
Fax: (541) 475-2962

www.bryantlovlienjarvis.com

July 10, 2002

DESCHUTES COUNTY COMMUNITY DEVELOPMENT DEPT.
ATTN: PAUL BLIKSTAD
117 NW LAFAYETTE AVE.
BEND, OR 97701

Via Fax - 385-1764

LAURIE CRAGHEAD
DESCHUTES COUNTY LEGAL COUNSEL
1130 NW HARRIMAN
BEND, OR 97701

Via Fax - 383-0496

Re: Applicants: Jeff & Pat Dowell
File No.: DR-02-2 (A-02-7)

Dear Laurie and Paul:

The circuit court trial of *Kuhn vs. Dowell* that was set for July 9th and 10th is not going to be completed as anticipated in time to hear the above-referenced appeal. As you know, the appeal hearing is set for this afternoon at 3:00 p.m.

First, we are hereby waiving the 150-day clock with respect to this application.

Second, we would appreciate that this matter be reset at the earliest possible convenience.

We apologize for any inconvenience this may have caused, but the trial is just taking longer than anticipated and the parties are simply not available for the land use appeal hearing before the Commissioners. I appreciate your cooperation in this matter.

Very truly yours,

Robert S. Lovlien

ROBERT S. LOVLIEN

RSL/alk

cc: Liz Fancher, via fax @ (541) 385-3076
Gerry Martin, via fax @ (541) 382-7068

M:\DATA\RSL\CLIENTS\D\Dowell.042.Ltr to Blikstad & Craghead

BRYANT, LOVLIEN & JARVIS, PC
ATTORNEYS AT LAW
ESTABLISHED 1915

Post-it™ Fax Note 7671	Date 1/10/03	# of pages ▶ 1
To J. E. Gancher	From Laurie C.	
Co./Dept.	Co.	
Phone #	Phone #	
Fax # 385-3076	Fax #	

RECEIVED
JAN 10 2003
DESCHUTES COUNTY
LEGAL COUNSEL

Neil R. Bryant
Robert S. Lovlien
Lynn F. Jarvis
John A. Berge
Sharon R. Smith
John D. Sorlie
Mark G. Reinecke
Melissa P. Lande
Kiri C. Ford
Lane D. Lyons, LL.M.
Jennifer A. Allen

BEND
591 S.W. Mill View Way
Mail: P.O. Box 1151
Bend, Oregon 97709
Phone: (541) 382-4331
Fax: (541) 389-3386

MADRAS
24 S.W. Fifth Street
Mail: P.O. Box 650
Madras, Oregon 97741
Phone: (541) 475-2757
Fax: (541) 475-2962

www.bryanlovlienjarvis.com

January 9, 2003

03 01 16

COPY

LAURIE CRAGHEAD
DESCHUTES COUNTY LEGAL COUNSEL
1130 NW HARRIMAN
BEND, OR 97701

Re: *Kuhn/Dowell*

Dear Laurie:

The purpose of this letter is to advise the County that the Applicant, Jeff Dowell, will agree to extend the 150-day clock until the end of the grant period for the pending mediation. This extension of the 150-day clock is on the condition that mediation is continuing. In the event mediation terminates, we would agree to provide you with not less than two (2) weeks notice that we would be revoking this extension.

Very truly yours,

Robert Lovlien
ROBERT S. LOVLIEN

RSL/alk
cc: Mr. and Mrs. Jeff Dowell
(RSL:DOWELL.049)

Cal _____
_____

4-193 M

BRYANT, LOVLIEN & JARVIS, PC
ATTORNEYS AT LAW
ESTABLISHED 1978

Neil R. Bryant
Robert S. Lovlien
Lynn F. Jarvis
John A. Berge
Sharon R. Smith
John D. Sorlie
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BEND
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Mail: P.O. Box 650
Madras, Oregon 97741
Phone: (541) 475-2757
Fax: (541) 475-2962

WWW.BLJLAWYERS.COM

August 27, 2003

LAURIE CRAGHEAD
DESCHUTES COUNTY LEGAL COUNSEL
1130 NW HARRIMAN
BEND, OR 97701

Re: Dowell, Jeff and Patricia

Dear Laurie:

The Applicants have agreed to extend the 150-day rule to October 1, 2003. This will accommodate the time necessary to complete the decision.

Please call me if you have any questions.

Very truly yours,

Robert Lovlien

ROBERT S. LOVLIEN

RSL/alk
Encl.
cc: Mr. and Mrs. Jeff Dowell
(RSL:DOWELL.057)

Cal 9/2/03
D/L 10/1/03

DESCHUTES COUNTY LEGAL COUNSEL

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
LIZ FANCHER	Laurie Craghead – 388-6593
	Carol O'Dell, Legal Assistant
COMPANY:	DATE:
	October 20, 2003
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
541-385-3076	3
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
541-385-3067	4-913
RE:	YOUR REFERENCE NUMBER:
KUHN/DOWELL	

☐ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Correspondence from Bob Lovlien dated 8/27/03 and 9/24/03.

1130 NW HARRIMAN, BEND, OREGON 97701
TELEPHONE 541-388-6623 / FAX 541-383-0496

4-683

BRYANT, LOVLIEN & JARVIS, PC
ATTORNEYS AT LAW
ESTABLISHED 1975

Neil R. Bryant
Robert S. Lovlien
Lynn F. Jarvis
John A. Berge
Sharon R. Smith
John D. Sorlie
Mark G. Reinecke
Melissa P. Lande
Kitri C. Ford
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Mail: P.O. Box 650
Madras, Oregon 97741
Phone: (541) 475-2757
Fax: (541) 475-2962

WWW.BLJLAWYERS.COM

September 24, 2003

HAND DELIVERED

LAURIE CRAGHEAD
DESCHUTES COUNTY LEGAL COUNSEL
1130 NW HARRIMAN
BEND, OR 97701

Re: Dowell, Jeff and Patricia
File No.: DR-02-2

Dear Laurie:

Based upon my schedule over the past three weeks, I am not going to be able to have the Findings and Decision prepared for your review prior to October 1, 2003. The Applicants therefore agree to extend the 150-day rule to November 1, 2003. This should provide ample opportunity for completion and review of the Findings and Decision.

This is based upon conflicts with my schedule and not based upon any delays of the County. As always, I appreciate your cooperation in this matter.

Very truly yours,

Robert S. Lovlien

ROBERT S. LOVLIEN

RSL/alk
(RSL:DOWELL.058)

Cal 9/24/03
D/L 10/3/03
CDA

DESCHUTES COUNTY LEGAL COUNSEL

FACSIMILE TRANSMITTAL SHEET

TO: PAUL BLIKSTAD
Fax: 385-1764

FROM:
LAURIE E. CRAGHEAD
By: Laurie Kendall, Legal Assistant

cc: LIZ FACHER
Fax: 385-3076

DATE: October 28, 2003

TOTAL NUMBER OF PAGES:
2

SENDER'S REFERENCE NO.:

RE: Dowell

YOUR REFERENCE NO.:

☐ URGENT √ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

See attached - FYI.

Post-it® Fax Note 7671	Date 10/28/03	# of pages ▶ 2
To BILL KUHN	From LIZ FANCHER	
Co./Dept.	Co.	
Phone #	Phone # 541-385-3067	
Fax # 383-8883	Fax # 541-385-3076	

1130 NW HARRIMAN, BEND, OREGON 97701
TELEPHONE 541-388-6623 / FAX 541-383-0496

BRYANT, LOVLIEN & JARVIS, PC
ATTORNEYS AT LAW
ESTABLISHED 1915

Neil R. Bryant
Robert S. Lovlien
Lynn F. Jarvis
John A. Berge
Sharon R. Smith
John D. Sorlie
Mark G. Reinecke
Melissa P. Lande
Kitri C. Ford
Lane D. Lyons, LL.M.
Paul J. Taylor

BEND
591 S.W. Mill View Way
Mail: P.O. Box 1151
Bend, Oregon 97709
Phone: (541) 382-4331
Fax: (541) 389-0386

MADRAS
24 S.W. Fifth Street
Mail: P.O. Box 650
Madras, Oregon 97741
Phone: (541) 475-2757
Fax: (541) 475-2962

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October 27, 2003

LAURIE CRAGHEAD
DESCHUTES COUNTY LEGAL COUNSEL
1130 NW HARRIMAN
BEND, OR 97701

Re: Dowell, Jeff and Patricia
File No.: DR-02-2

Dear Laurie:

The Applicants would agree to extend the 150-day rule in this matter to December 1, 2003. I have an arbitration hearing that is set, that has not been continued as I had anticipated. We will need additional time to prepare the Findings and Decision in final form.

As always, I appreciate your cooperation in this matter.

Very truly yours,

Robert Lovlien

ROBERT S. LOVLIEN

RSL/alk
(RSL:DOWELL.059)

DESCHUTES COUNTY LEGAL COUNSEL

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
LIZ FANCHER	Laurie Craghead – 388-6593
	Laurie Kendall, Legal Assistant
	DATE:
	December 1, 2003
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
541-385-3076	2
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
541-385-3067	4-913
RE:	YOUR REFERENCE NUMBER:
KUHN/DOWELL	

☐ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Correspondence from Bob Lovlien dated 12/1/03.

Post-it® Fax Note 7671	Date 12/1/03 # of pages ▶ 2
To BILL+LEIGH KUHN	From LIZ FANCHER
Co./Dept.	Co.
Phone #	Phone # 541-385-3067
Fax # 541-383-8803	Fax # 541-385-3076

1130 NW HARRIMAN, BEND, OREGON 97701
TELEPHONE 541-388-6625 / FAX 541-383-0496

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Neil R. Bryant
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Lynn F. Jarvis
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Sharon R. Smith
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December 1, 2003

HAND DELIVERED

LAURIE CRAGHEAD
DESCHUTES COUNTY LEGAL COUNSEL
1130 NW HARRIMAN
BEND, OR 97701

Re: Dowell, Jeff and Patricia
File No.: DR-02-2

Dear Laurie:

The Applicants would agree to extend the 150-day rule in this matter to January 15, 2004. We will need additional time to prepare the Findings and Decision in final form.

As always, I appreciate your cooperation in this matter.

Very truly yours,

ROBERT S. LOVLIEN

RSL/alk
(RSL:DOWELL.060)

Cal 12/1/03
D/L 1/05/04

Post-it® Fax Note 7671 | Date 1/13/04 | # of pages ▶ 1
To Liz Fancher | From Laurie C
Co./Dept. | Co.
Phone # 385-3076 | Phone #
Fax # | Fax #
F-YI

RECEIVED
JAN 13 2004
DESCHUTES COUNTY
LEGAL COUNSEL

BRYANT, LOVLIEN & JARVIS, PC
ATTORNEYS AT LAW
ESTABLISHED 1979

Neil R. Bryant
Robert S. Lovlien
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Melissa P. Lande
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January 13, 2004

HAND DELIVERED

LAURIE CRAGHEAD
DESCHUTES COUNTY LEGAL COUNSEL
1130 NW HARRIMAN
BEND, OR 97701

Re: Dowell, Jeff and Patricia
File No.: DR-02-2

Dear Laurie:

The Applicants would agree to extend the 150-day rule in this matter to February 15, 2004. We will need additional time to prepare the Findings and Decision in final form.

As always, I appreciate your cooperation in this matter.

Very truly yours,

Robert Lovlien

ROBERT S. LOVLIEN

RSL/alk
(RSL:DOWELL.061)

Post-it® Fax Note 7671 | Date 01.13.04 | # of pages ▶ 01
To Bill Kuhn | From Liz Fancher
Co./Dept. | Co. Lynne Hallock
Phone # | Phone # 541 385-3076
Fax # 385-3883 | Fax # 541 385-3076

Cal 1/13/04 CC
D/L 2/15/04

DESCHUTES COUNTY LEGAL COUNSEL

FACSIMILE TRANSMITTAL SHEET

TO: LIZ FANCHER	FROM: LAURIE E. CRAGHEAD
COMPANY:	DATE: FEBRUARY 18, 2004
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
385-3076	2
RE: Dowell - Extension	

☐ URGENT ☑ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Per your e-mail request.

Post-it® Fax Note 7671	Date 2-18-04 # of pages ▶ 2
To Bill Kuhn	From Liz Fancher
Co./Dept.	Co.
Phone #	Phone # 385-3067
Fax # 383-8885	Fax # 385-3076

1130 NW HARRIMAN, BEND, OREGON 97701
TELEPHONE 541-388-6623 / FAX 541-383-0496

4-193

BRYANT, LOVLIEN & JARVIS, P.C.
ATTORNEYS AT LAW
ESTABLISHED 1978

Neil R. Bryant
Robert S. Lovlien
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Sharon R. Smith
John D. Sorlie
Mark G. Reinecke
Melissa P. Lande
Kitri C. Ford
Lane D. Lyons, LL.M.
Paul J. Taylor
Christopher A. Bagley

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Bend, Oregon 97709
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Fax: (541) 389-3386

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February 6, 2004

HAND DELIVERED

LAURIE CRAGHEAD
DESCHUTES COUNTY LEGAL COUNSEL
1130 NW HARRIMAN
BEND, OR 97701

Re: Dowell, Jeff and Patricia
File No.: DR-02-2

Dear Laurie:

The Applicants would agree to extend the 150-day rule in this matter to March 31, 2004. We will need additional time to prepare the Findings and Decision in final form.

As always, I appreciate your cooperation in this matter.

Very truly yours,

Robert Lovlien

ROBERT S. LOVLIEN

RSL/alk
(RSL:DOWELL.062)

Cal 2/6/04 2:00
D/L 3/31/03

DESCHUTES COUNTY LEGAL COUNSEL

FACSIMILE TRANSMITTAL SHEET

TO: LIZ FANCHER	FROM: Laurie Craghead – 388-6593 Carol O'Dell, Legal Assistant
	DATE: March 25, 2004
FAX NUMBER: 541-385-3076	TOTAL NO. OF PAGES INCLUDING COVER: 2
PHONE NUMBER: 541-385-3067	SENDER'S REFERENCE NUMBER: 4-193
RE: KUHN/DOWELL	YOUR REFERENCE NUMBER:

☐ URGENT X FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Correspondence from Bob Lovlien dated 3/24/04.

Post-it® Fax Note 7671	Date 3/25/04 # of pages ▶ 2
To BILL CUHN	From LIZ FANCHER
Co./Dept.	Co.
Phone #	Phone # 385-3067
Fax # 383-6883	Fax # 385-3076

1130 NW HARRIMAN, BEND, OREGON 97701
TELEPHONE 541-388-6623 / FAX 541-383-0496

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ATTORNEYS AT LAW
ESTABLISHED 1975

Neil R. Bryant
Robert S. Lovlien
Lynn F. Jarvis
John A. Berge
Sharon R. Smith
John D. Sorlie
Mark G. Reinecke
Melissa P. Lande
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Lane D. Lyons, LL.M.
Paul J. Taylor
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RECEIVED
MAR 24 2004
DESCHUTES COUNTY
LEGAL COUNSEL

March 24, 2004

HAND DELIVERED

LAURIE CRAGHEAD
DESCHUTES COUNTY LEGAL COUNSEL
1130 NW HARRIMAN
BEND, OR 97701

Re: Dowell, Jeff and Patricia
File No.: DR-02-2

Dear Laurie:

The Applicants would agree to extend the 150-day rule in this matter to May 15, 2004. With my mother's illness and untimely passing, it has taken a good two weeks or more out of my schedule that I did not anticipate. I have not been able to get to the finished product in this matter.

As always, I appreciate your cooperation in this matter.

Very truly yours,

Robert Lovlien

ROBERT S. LOVLIEN

RSL/alk
(RSL:DOWELL..063)

Cal 3/24/04 clo
D/L 5/15/04
Calendared for 5/14/04 at 5/15?

DESCHUTES COUNTY LEGAL COUNSEL

FACSIMILE TRANSMITTAL SHEET

TO: LIZ FANCHER	FROM: LAURIE E. CRAGHEAD
FAX NUMBER: 385-3076	TOTAL NO. OF PAGES INCLUDING COVER: 2
CC: PAUL BLIKSTAD 385-1764	DATE: MAY 10, 2004
RE: Dowell - Extension	

☐ URGENT ☑ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

For your information.

Post-it® Fax Note 7671	Date 5/10/04 # of pages ▶ 2
To BILL CUNO	From LIZ FANCHER
Co./Dept.	Co.
Phone #	Phone # 541-385-3067
Fax # 383-8883	Fax # 541-385-3076

HOPE YOU WON AT CT OF APPEALS!

1130 NW HARRIMAN, BEND, OREGON 97701
TELEPHONE 541-388-6625 / FAX 541-385-0496

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ATTORNEYS AT LAW
ESTABLISHED 1975

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Sharon R. Smith
John D. Sorlie
Mark G. Reinecke
Melissa P. Lande
Kiri C. Ford
Lane D. Lyons, LL.M.
Paul J. Taylor
Christopher A. Bagley

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May 7, 2004

HAND DELIVERED

LAURIE CRAGHEAD
DESCHUTES COUNTY LEGAL COUNSEL
1130 NW HARRIMAN
BEND, OR 97701

Re: Dowell, Jeff and Patricia
File No.: DR-02-2

Dear Laurie:

The Applicants would agree to extend the 150-day rule in this matter to June 30, 2004.

I am still reluctant to release the decision until we have some feel for where the Court of Appeals is going on the matter. However, I guess we may just not be able to wait any longer. I will try to get that opinion up to you in the next couple of weeks. I was hoping we would have some resolution prior to this time.

As always, I appreciate your cooperation in this matter.

Very truly yours,

Robert S. Lovlien

ROBERT S. LOVLIEN

RSL/alk
(RSL:DOWELL.064)

Cal 5/7/04 cwo
D/L 6/30/04

William John Kuhn

From: "Liz Fancher" <liz@lizfancher.com>
To: "Laurie Craghead" <Laurie_Craghead@co.deschutes.or.us>
Cc: "William John Kuhn" <William@RiskFactor.com>; "BOB LOVLIEN" <lovlien@bryantlovlienjarvis.com>
Sent: Wednesday, June 30, 2004 5:12 PM
Attach: Liz Fancher.vcf
Subject: Further Delay re Issuing Dowell Decision; DR-02-2

Laurie,

The 150-day extension letter from Bob Lovlien dated June 30, 2004 indicates that Mr. Lovlien is "still reluctant to release the decision" for the Dowell matter. Mr. Lovlien states that he is waiting for the Oregon Court of Appeals to issue a decision on the appeal of an unrelated Circuit Court decision.

Would you please advise me why the Board or its staff is waiting for the Court of Appeals decision and when it intends to act to bring this very old case to a local government conclusion.

Liz Fancher

DESCHUTES COUNTY LEGAL COUNSEL

FACSIMILE TRANSMITTAL SHEET

TO: LIZ FANCHER
FROM: LAURIE E. CRAGHEAD
FAX NUMBER: 385-3076
TOTAL NO. OF PAGES INCLUDING COVER: 2
CC: PAUL BLIKSTAD 385-1764
DATE: JUNE 30, 2004
RE: Dowell - Extension

☐ URGENT ☑ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

For your information.

Post-it® Fax Note 7671	Date 6/30/04 # of pages ▶ 2
To BILL (Cuth)	From LIZ FANCHER
Co./Dept. here we go again	Co. I Sent an e-mail.
Phone #	Phone # 385-3067
Fax # 383-8883	Fax #

1300 NW WALL STREET, SUITE 200,, BEND, OREGON 97701
TELEPHONE 541-388-6625 / FAX 541-617-4748

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ATTORNEYS AT LAW
ESTABLISHED 1985

Neil R. Bryant
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Lynn F. Jarvis
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Sharon R. Smith
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RECEIVED
JUN 30 2004
DESCHUTES COUNTY
LEGAL COUNSEL

June 30, 2004

HAND DELIVERED

LAURIE CRAGHEAD
DESCHUTES COUNTY LEGAL COUNSEL
1130 NW HARRIMAN
BEND, OR 97701

Re: Dowell, Jeff and Patricia
File No.: DR-02-2

Dear Laurie:

The Applicants would agree to extend the 150-day rule in this matter to July 31, 2004.

I am still reluctant to release the decision until we have some feel for where the Court of Appeals is going on the matter. However, I guess we may just not be able to wait much longer. I will try to get that opinion up to you in the next couple of weeks. I was hoping we would have some resolution prior to this time.

As always, I appreciate your cooperation in this matter.

Very truly yours,

Robert Lovlien

ROBERT S. LOVLIEN

RSL/alk
(RSL:DOWELL.065)

William John Kuhn

From: "Liz Fancher" <liz@lizfancher.com>
To: "William John Kuhn" <William@RiskFactor.com>
Sent: Thursday, July 01, 2004 9:11 AM
Subject: Fw: Further Delay re Issuing Dowell Decision; DR-02-2

Bill,

Here is Laurie's response.

We are now on record as objecting to these delays. I think we should write a very polite letter to the Board to request that it direct Mr. Lovlien to provide it with the draft decision, as it is now evident that the decision has been written and there is no legal or other good reason to delay issuing the written decision for a Board action taken two years ago other than to accommodate Bob Lovlien's wishes. We could point out that we have waited patiently through a long series of delays for Bob's benefit and list each and every one (excluding the delay for mediation, of course). I think it would be fun to attach the requests for continuance as enclosures to the letter.

Would you like to write the first draft (for my signature)? I could take your draft text, "polite it up" and send it to the Commissioners. I want this all in the LUBA record. Even if it is not grounds for remand or reversal, it will be fun to add it to the findings of fact section (if we have room - there is a 50 page limit) to add to the picture of bias we are going to want to paint.

Liz

Liz

----- Original Message -----
From: Laurie Craghead
To: Liz Fancher
Cc: BOB LOVLIEN
Sent: Wednesday, June 30, 2004 6:25 PM
Subject: RE: Further Delay re Issuing Dowell Decision; DR-02-2

Liz:

Because Bob is representing the applicant and has been directed by the Board to draft the decision. The County is accommodating Bob in this matter. He has been courteous in accepting the responsibility of drafting the decision and to not to file a mandamus in this case.

Laurie Craghead
Assistant Legal Counsel
Deschutes County
(541) 388-6593

-----Original Message-----
From: Liz Fancher [mailto:liz@lizfancher.com]
Sent: Wednesday, June 30, 2004 5:12 PM
To: Laurie Craghead
Cc: William John Kuhn; BOB LOVLIEN
Subject: Further Delay re Issuing Dowell Decision; DR-02-2

Laurie,

The 150-day extension letter from Bob Lovlien dated June 30, 2004 indicates that Mr. Lovlien is "still reluctant to release the decision" for the Dowell matter. Mr. Lovlien states that he is waiting for the Oregon Court of Appeals to issue a decision on the appeal of an unrelated Circuit Court decision.

Would you please advise me why the Board or its staff is waiting for the Court of Appeals decision and when it intends to act to bring this very old case to a local government conclusion.

Liz Fancher

William John Kuhn

Martha Leigh Kuhn

PO Box 5996 Bend, Oregon 97708-5996 Phone: (541) 389-3676

Tuesday 6 July 2004

Board of County Commissioners
1300 NW Wall Street
Bend, Oregon 97701

Dear Commissioners,

We are writing to request that the Board of County Commissioners issue a decision for appeal A-02-7, an appeal of Declaratory Ruling DR-02-2 at this time. Two years have passed since the appellant's attorney, Robert Lovlien was asked to write the decision for the Board. To date, no draft decision has been filed with the County.

There have been ten requests for extensions of the 150-day clock for the Dowells' Appeal of DR-02-2 (originally heard 29 August 2002) regarding side yard setbacks. While we supported the request to allow for mediation, the remainder of the requests for delay (please see the nine attached requests) were granted for the benefit of the appellants or the appellants' attorney.

Based on Mr. Lovlien's language of the last two requests for extension filed with the Board it is clear that Mr. Lovlien has completed writing the decision but is choosing not to send it to the Board for adoption. Mr. Lovlien writes: "I am still reluctant to release the decision until we have some feel for where the Court of Appeals is going on the matter."

Attached is an email from Jerry Martin, civil attorney for the Kuhns in the Court of Appeals matter referenced in Mr. Lovlien's extension letters. Mr. Martin says, "As you know oral argument has not been set for the Court of Appeals case involving the Dowell property. Based on recent information from the Court the argument will probably be in October (2004). Experience tells me that it might be up to a year (October 2005) or more after argument before we receive the decision." In this light, limping along at 30-day extensions at a time is puzzling. Are we to assume that Mr. Lovlien wants to wait until October 2005 to submit the Board's decision?

The issues in front of the Court of Appeals from the Civil Court case Mr. Lovlien refers to are not in any way the same as the issues in the declaratory ruling and appeal. What exactly is it that Mr. Lovlien sees as a connection? How does this merit further delay of a very old case? Why has the Board allowed Mr. Lovlien to dictate when to release a Board decision made almost two years ago?

It is time for all parties to move forward with this case. As you know, we will be appealing the Board's decision to the Land Use Board of Appeals. Without a decision, we are unable to bring closure to this issue.

Justice delayed is justice denied. Please advise us how and when you intend to act on this matter.

Sincerely,

William John Kuhn Martha Leigh Kuhn

B. Before the Board was a Discussion of Timeline for Decision in Land Use Case File #A-02-7 (Dowell).

Laurie Craig explained that because of an e-mail the Board received, she contacted both attorneys last week. The Board decided this case last year; the Board made a decision regarding setbacks, and the applicant's attorney was to write the decision. He asked for extensions because a private right of action, a code enforcement case, and a Court of Appeals case caused delays. Ms. Craghead asked if the Board would like the extension to the end of July be the final one.

There was also a hope that parties would come to an agreement through DLCD mediation, but that didn't happen.

All three Commissioners indicated it has taken too long already, and they would like to get the issue finalized.

Being no further items brought before the Board, Chair Daly adjourned the meeting at 11:35 a.m.

DATED this 12th Day of July 2004 for the Deschutes County Board of Commissioners.

Michael M. Daly, Chair

Dennis R. Luke, Commissioner

Tom DeWolf, Commissioner

ATTEST:

Recording Secretary

William John Kuhn

From: "Laurie Craghead" <Laurie_Craghead@co.deschutes.or.us>
To: <William@RiskFactor.com>
Cc: "Liz Fancher (Liz Fancher)" <liz@lizfancher.com>; "Robert S. Lovlien (Robert S. Lovlien)" <lovlien@bryantlovlienjarvis.com>; "Paul Blikstad" <Paul_Blikstad@co.deschutes.or.us>
Sent: Wednesday, August 04, 2004 2:26 PM
Subject: FW: Please finalize A-02-7 and appeal of DR-02-2

Mr. Kuhn:

Commissioner Daly forwarded this to me in that I did not receive it directly. Also, I seem to have lost Jerry's e-mail address.

For your information, I received the draft decision today and sent a copy to Paul Blikstad. Paul and I are in the process of reviewing the draft. This is, however, an extremely busy week in that I am trying to complete several major projects prior to leaving Saturday for a week's vacation.

Laurie Craghead
Assistant Legal Counsel
Deschutes County
(541) 388-6593

-----Original Message-----
From: William John Kuhn [mailto:William@RiskFactor.com]
Sent: Wednesday, August 04, 2004 10:26 AM
To: Mike Daly; Tom DeWolf; Dennis Luke
Cc: Martin FranMarJerry; FancherLiz - Land Use; Lovlien
Subject: Please finalize A-02-7 and appeal of DR-02-2

Dear Laurie Craghead, Commissioner Daly, Commissioner Luke, and Commissioner DeWolf,

We are writing to enquire when the Board will adopt the decision for the Dowell appeal (A-02-7) of Declaratory Ruling DR-02-2. We had hoped the decision would be adopted in July as it has been written by the Dowell's attorney, Robert Lovlien. We appreciate your assistance in bringing this matter to a close by deciding not to allow further delay, but are deeply concerned that the 150-day clock may expire before the Board issues a decision. (From page 12 Minutes of Board of Commissioners' Work Session Monday 12 July 2004 - "All three Commissioners indicated it has taken too long already, and they would like to get the issue finalized.")

Delay will give the Dowells the legal right to seek a writ of mandamus. The filing of a writ will prejudice our legal position in this matter.

We respectfully request that the County act promptly to adopt the Lovlien decision to prevent prejudice to our legal position at its next scheduled meeting on Monday 9 August 2004 or to set a date certain for adoption within the 150-day time limit.

Thank you for your anticipated assistance. Please advise us when the decision will be adopted.

William Kuhn

William John Kuhn

From: "Liz Fancher" <liz@lizfancher.com>
To: "William John Kuhn" <William@RiskFactor.com>
Sent: Friday, August 06, 2004 12:54 PM
Subject: Re: Dowell Case

----- Original Message -----
From: Laurie Craghead
To: Paul Blikstad ; Liz Fancher (Liz Fancher)
Sent: Friday, August 06, 2004 11:25 AM
Subject: FW: Dowell Case

FYI

Laurie Craghead
Assistant Legal Counsel
Deschutes County
(541) 388-6593

-----Original Message-----
From: Bob Lovlien [mailto:robert@bljlawyers.com]
Sent: Friday, August 06, 2004 11:12 AM
To: Laurie Craghead
Subject: Dowell Case

08/06/04

Laurie: I do not want the 150-day clock to be an issue. Just for the record, we would waive that 150-day clock an additional 45 days just to make sure we get the decision done correctly.

ROBERT S. LOVLIEN
BRYANT, LOVLIEN & JARVIS, PC
P.O.BOX 1151
BEND, OR 97709
Telephone (541) 382-4331; Fax (541) 389-3386

Deschutes County Board of Commissioners
1130 NW Harriman St., Bend, OR 97701-1947
(541) 388-6570 - Fax (541) 388-4752 - www.deschutes.org

AGENDA REQUEST AND STAFF REPORT

DEADLINE: The following items must be submitted to the Board's secretary no later than noon of the Thursday prior to the Board meeting.

- This agenda request form
- Your staff report
- Any relevant backup information
- Maps of the subject property and general area, if appropriate
- The original documents to be approved

The Board's secretary will route your original documents to Legal Counsel for approval if necessary. Please do not give your documents directly to Legal Counsel.

All boxes must be completed.

Department/Division:	Person Submitting Request:	Contact Phone #:
CDD/PLANNING	PAUL BLIKSTAD	6554
Date Submitted:	**Person to Attend Meeting:**	**Date of Meeting:**
AUGUST 5, 2004	PAUL BLIKSTAD	AUGUST 11, 2004

Description of Item (as it should appear on the agenda), and Action Requested:

BOARD CONSIDERATION AND POSSIBLE SIGNATURE OF THE DECISION ON DR-02-2, A DECLARATORY RULING FOR SIDE YARD SETBACKS IN THE F-2, FOREST USE ZONE.

Background Information *(please attach additional pages as appropriate):*

THE ORIGINAL HEARING WAS HELD AUGUST 29, 20002. THE APPLICANT HAS PREVIOUSLY REQUESTED SEVERAL TIME EXTENSIONS. NO ADDITIONAL EXTENSIONS HAVE BEEN GRANTED AND A DECISION NEEDS TO BE RENDERED. (Dowell/Kuhn)

Budget Implications:

Policy Implications:

Distribution of Documents after Approval:

Rev. 7-03

From: Peter Gutowsky
To: "William Kuhn"; Nick Lelack; Tom Anderson; Bonnie Baker; David Doyle
Cc: Smith Sharon re Dowell
Subject: RE: Question from the Kuhns
Date: Wednesday, January 27, 2016 11:22:09 AM

Bill and all,

Today at 5:00 p.m. is the deadline for written comments. Afterwards, there's a one week rebuttal period which closes on February 3, followed by a one week period for final argument which ends on February 10. To the extent the 150-day timeline applies to this declaratory ruling, the applicant on January 13 publically stated that she would extend it an additional 90 days.

Peter Gutowsky, AICP
Planning Manager
Deschutes County Community Development Department
117 NW Lafayette
Bend, OR 97701
Tel: (541) 385-1709
Web: www.deschutes.org/cdd

From: William Kuhn [mailto:William@RiskFactor.com]
Sent: Wednesday, January 27, 2016 10:59 AM
To: Peter Gutowsky; Nick Lelack; Tom Anderson; Bonnie Baker; David Doyle
Cc: Smith Sharon re Dowell
Subject: Question from the Kuhns

Please see our attached question: 20160127 Clock or no clock.

Thank you

--
William Kuhn
INVEST/O - Registered Investment Advisors
PO Box 5996
Bend, OR 97708-5996
541 389 3676
William@RiskFactor.com

"Illegitimi non carborundum" - refers to the continuing acts of Deschutes County

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

BEFORE THE DESCHUTES COUNTY COMMUNITY DEVELOPMENT DEPARTMENT

DR-13-16 As modified by MA-14-1	)))))	**FIRST SUPPLEMENTAL ARGUMENT ON APPEAL**

APPLICANT/OWNER:	Jeff and Patti Dowell c/o Bryant, Lovlien & Jarvis, P.C. 591 SW Mill View Way Bend, Oregon 97702
ATTORNEY:	Sharon R. Smith Bryant, Lovlien & Jarvis, P.C. 591 SW Mill View Way Bend, Oregon 97702
LOCATION:	65595 Sisemore Road, Bend, OR 97701 Tax Map: 16-11-19, Tax Lots 100, 300, Deschutes County, Oregon.
REQUEST:	Declaratory Ruling for an interpretation of the requirements (specific provisions, required signatures, and any other considerations) necessary to satisfy Condition of Approval #2 of CU-80-02, which mandates an 'acceptable written agreement' prior to the sale of any lot in the cluster development established by CU-80-02.

I. EXHIBITS:

A-9. Original Purchase and Sale Contract
A-10. Corrected Purchase and Sale Contract
A-11. Photos of Signs and Brush Piles

II. PURPOSE:

The purpose of this First Supplemental Argument on Appeal is to provide additional testimony, with some supporting argument, to respond to, supplement, or clarify testimony delivered at the January 13, 2016 public hearing.

Jeff and Patti Dowell (the "Dowells") also want to acknowledge that the Dowells, Leigh and Bill Kuhn (the "Kuhns", individually Bill Kuhn is referred to as "Kuhn"), and Deschutes County (the "County") have all made mistakes, taken regrettable actions, and been harmed at various points

throughout this 25 year plus process. The purpose of this appeal is not to determine who is most at fault. The parties will never agree on the course of events that led to this point and venturing down that rabbit hole is what has caused this ordeal to drag out as long as it has. Rather, the purpose of this appeal is to find a path forward.

Accordingly, the Dowells are not going to document every mistake made, action taken, or harm suffered. While the Dowells could develop an extensive list of grievances, that is not germane to the current application. Rather, the Dowells will simply respond to the questions raised by the Commissioners and continue to focus on the issues actually pertinent to this appeal.

III. 150 DAY RULE

The Dowells do not believe the 150 day rule applies to this Declaratory Ruling. To the extent it does, the Dowells hereby agree to toll the clock for 90 days from January 13, 2016.

IV. LAND SALE CONTRACT/DEEDS

Kuhn indicated that the Dowells fraudulently sought to assert ownership over the Open Space Parcel and perhaps the Kuhn Parcel. The Dowells have never sought to assert any ownership right beyond their ownership of the Dowell Parcel and their ½ interest in the Open Space Parcel.

The Dowells' understanding of Kuhn's allegation is that the legal description used in the Dowells' original purchase and sale documents (Document No. 1989-24952 attached as ***Exhibit A-9***) did not signify that the Dowells were only acquiring a ½ interest in the Open Space Parcel. The Dowells' predecessor in interest, Mark Burchette prepared the document. Failing to acknowledge the ½ interest in the Open Space Parcel was erroneous, not fraudulent. As soon as the error was discovered, it was corrected (Document No. 1990-20037 attached as ***Exhibit A-10***). The Dowells have always acknowledged Kuhn's ownership interest in the cluster development and have never claimed that ownership as their own.

Kuhn also claimed that the County accepted fraudulent documents prepared by the Dowells. This argument was not further developed, so the Dowells cannot provide a specific response. If Kuhn was referring to the original purchase and sale agreement, while erroneous, it nonetheless serves as evidence that the Dowells acquired an interest in the Dowell Parcel as might be required to pull a building permit. To the Dowells' knowledge, the original purchase and sale agreement has not been used by the County for any purpose, if at all, other than to determine that the Dowells have an interest in the Dowell Parcel.

If Kuhn believed there was an error in paperwork relied on by the County several years ago, he should have raised it back then and supplied more information as to its significance. Alleging unsubstantiated fraud by the Dowells and/or the County is not productive or relevant for determining the required elements of the required maintenance agreement.

IV. SPITZ REPORT

Kuhn did not make any specific argument with respect to the Spitz report contained in Exhibit 3 to his 2015 Property Tax Appeal. However, this document does not address the issues in this appeal as it is clear that the Spitz Report was drafted for purposes of determining valuation of the Open Space Parcel and not for determining the requirements of a maintenance agreement.[1]

To the extent the Spitz Report discusses maintenance of the Open Space Parcel, such discussion does not inform the requirements of the required maintenance agreement. In the course of determining valuation, the Spitz Report identifies potential uses of the property, the condition of the property as it relates to wildlife, and potential management regimes to promote wildlife. As is outlined in the Dowells' Argument on Appeal, wildlife management is not the exclusive purpose of this parcel. The Spitz Report provides no analysis of the legal requirements for the maintenance agreement and appears to be based on Kuhn's view that the sole purpose of the open space parcel is wildlife habitat.

V. SETTLEMENT AGREEMENT

Applicant addressed the Settlement Agreement included as Exhibit 4 of Kuhn's 2015 Property Tax Appeal in its Argument on Appeal. The settlement agreement, including any stipulations therein, is not binding on this proceeding because it was not actually adjudicated, the Dowells are not a party to the tax appeal, and the purposes of the two proceedings are entirely distinct.

VI. ORS 105.820

Kuhn implied at the public hearing that he is entitled to a share of the rents paid by tenants of the Dowell Parcel pursuant to ORS 105.820. ORS 105.820 provides:

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

As it clear from the plain language, this statute only provides a remedy for rents earned from jointly-owned property (i.e. the Open Space Parcel). The Dowells have never charged any rents for Tax Lot 300. The Dowells have occasionally collected rents from tenants of the Dowell Parcel. The Dowell Parcel is not owned in common with the Kuhns and thus ORS 105.820 does not apply to the Dowell Parcel.

At the beginning of their ownership, the Dowells did allow guests and tenants of the Dowell Parcel to use the Open Space Parcel. However, no rent was charged for using the Open Space Parcel and a tenant in common is allowed to bring guests onto commonly owned property.[2] In

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[1] The opening line states, "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."

[2] The Kuhns erected signs pointed at the Dowell Parcel requiring persons to obtain permission of the Kuhns prior to using the Open Space Parcel. See ***Exhibit A-11***. A tenant in common is not required to obtain permission from the other tenant in common to allow guests on jointly owned property provided such guests do not unreasonably

any event, the Dowells have since advised all guests and tenants to avoid the Open Space Parcel. Using the Open Space Parcel, whether by the Dowells or their guests, has only created conflict with the Kuhns who have effectively asserted dominion over the Open Space Parcel.

VII. DIFFERENT BUILDING DESIGN

At the public hearing, Kuhn argued that the Dowells deceived the County by changing building designs from originally submitted plans. Again, he did not point to any specific evidence to support his allegations. Plans for structures on the Dowell Parcel did change over time as a consequence of the variety of issues associated with the cluster development coming to light. However, the structure on the Dowell Parcel, received all proper permits and inspections.

VIII. MANAGEMENT OF THE OPEN SPACE PARCEL

Kuhn's claims that the Dowells have never contributed to management of the Open Space Parcel are overstated. The Dowells have made numerous offers to contribute to maintenance both physically and financially including proposing to take over maintenance entirely. These offers have always been rejected or unreasonably conditioned.[3]

As is evident from the documentary shown at the public hearing, the Kuhns have a strong connection to the Open Space Parcel and a specific vision for how the property is to be used and managed. Part of what has made it difficult to enter into the required maintenance agreement is that the Kuhns seek to impose a management regime that is well beyond that required by law or contemplated by the average homeowner. The Kuhns then demand compensation for pursuing these voluntary actions.

The Dowells commend the Kuhns for their devotion to the Open Space Parcel, and find it an admirable pursuit, but cannot commit themselves to writing a blank check for what is ultimately the Kuhns' passion project. This is particularly so where the Kuhns pursue these activities without consulting the Dowells. Unless the County determines that maintenance need only be the level that keeps the Open Space Parcel compliant with applicable law and such other expenses as the parties may agree, the parties will argue in perpetuity over the level of management required and how to apportion expenses.

IX. LOT LINE ADJUSTMENT

The Dowells do not understand the relevance for raising this issue. If it is being cited to question the location of the structure on the Dowell Parcel, that issue has been resolved conclusively

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interfere with the use of the common property by the other tenant in common. ORS 105.050 provides a remedy for a co-tenant that has been denied use of commonly-owned property.

[3] In apparent retaliation for the Dowells rejecting the Kuhns unreasonable demands, Kuhn began stacking brush removed from the Open Space Parcel adjacent to the Dowell Parcel. As of summer of 2013, there were approximately 6 piles and 3 signs. The Cloverdale fire department representative informed the Dowells that the piles are a fire hazard to the Dowells house and property. See ***Exhibit A-11*** (note the yellow rope that Kuhn set out as an unofficial marker of the property line).

against the Kuhns by LUBA and the courts. Again, past mistakes or harms suffered, valid or otherwise, are not relevant for determining the required elements of the required maintenance agreement.

X. ASSAULTS, SHOOTINGS, AND BOMBINGS

The documentary evidence and testimony submitted by Kuhn imply that the Dowells have engaged in a variety of violent criminal activity directed towards the Kuhns. The Dowells do not dispute that the Kuhns have been the victim of certain crimes, but unequivocally deny that the Dowells perpetrated or had any role in any criminal activity. The Dowells have been investigated numerous times at the insistence of the Kuhns.[4] The Dowells have always cooperated in these investigations and have never been charged with any crime.

XI. SITE VISIT REPORT

Kuhn has not cited any requirement for any county employee to complete a site visit report whenever they visit a property. There are a host of valid reasons why such a report would not be completed, but we need not explore this issue when it is not relevant for determining the required elements of the required maintenance agreement.

XII. OUTDOOR LIGHTING

The Dowells had a number of single female tenants early in their ownership of the Dowell Parcel. Once the relationship between the Kuhns and Dowells became hostile, Kuhn began surveilling occupants of the Dowell Parcel, which included logging visitors to the Dowell Property and spying from the bushes with binoculars. This behavior prompted a call to law enforcement, who advised that leaving the lights on was a good deterrent to inappropriate behavior.

At the time, the Dowells and Kuhns were also involved in protracted civil litigation over a variety of issues including outdoor lighting. During the pendency of those proceedings, the Dowells continued their lighting practices. When the litigation concluded after two years, the Dowells discontinued their lighting practices as ordered by the court.

XIII. POWER TO THE CLUSTER

The Kuhns did pay to extend power up Sizemore Road. When the Dowells first attempted to bring power to the Dowell Parcel, the Kuhns approached them about reimbursement for those costs. The Dowells thought that neighborly and initially agreed to pay. No price was discussed in this initial exchange. The Kuhns subsequently requested an amount in excess of $10,000.00, which was substantially higher than the Dowells expected.

The Dowells then investigated options for obtaining power other than by connecting to the Kuhns' extension. This led them to contact Central Electric Cooperative, Inc. ("CEC"). CEC

[4] Similarly, Kuhn filed a complaint with the Oregon State Bar against Bob Lovlien. The Bar investigated and found no professional misconduct.

informed the Dowells that CEC runs a reimbursement program to address precisely this type of situation. Specifically, CEC indicated that it determines the value of those extensions and equitably collects from benefitting customers to reimburse customers that extend power lines. CEC revealed to the Dowells that Kuhn would be paid by CEC for the Dowells' connection through this program and, to the Dowell's understanding, they were.

SUBMITTED this 27th day of January, 2016

BRYANT, LOVLIEN & JARVIS, P.C.

By: _____
SHARON R. SMITH, OSB#862920
GARRETT CHROSTEK, OSB#122965
Of Attorneys for Applicants

89-24952 193 - 0075

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:

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 r ight 114.47 feet, the long chord of which bears S 09°54'46" E, 113. 33 feet; thence along said r ight-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 that 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 ("seller") — 9/20/89 date

Notary Public for the "seller"

OFFICIAL SEAL
JOYCE A STRAN
NOTARY PUBLIC STATE OF ILLINOIS
MY COMM. EXP. AUG. 29,1990

Jeff Dowell ("purchaser") — 9/6/89 date

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.

Notary Public — 9-7-89 date

BEVERLEY J. GOODELL
Notary Public, State of New York
Qualified in Monroe County
My Commission Expires 9-14-91

Note: Please send all subsequent tax documents to:

Jeff Dowell
422 Lakeshore Drive
Hilton NY 14468

193 - 0078

STATE OF OREGON)
COUNTY OF DESCHUTES) SS.

I, MARY SUE PENHOLLOW, COUNTY CLERK AND RECORDER OF CONVEYANCES, IN AND FOR SAID COUNTY, DO HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS RECORDED THIS DAY:

89 SEP 28 PM 2:32

MARY SUE PENHOLLOW
COUNTY CLERK

David Crosby
18350 Skyline View Rd
Bend, Or 97701

BY. D Rehberg DEPUTY

NO. 89-24952 FEE 25-

DESCHUTES COUNTY OFFICIAL RECORDS

EXHIBIT A-9
4 of 4

90-20037

This contract is correcting 193/75 Contract 213 - 1074

This agreement made and entered into this 3rd day of August 1989, by and between MARK BURCHETT,MARTHA LEIGH KUHN, WILLIAM JOHN KUHN, hereinafter "seller" and JEFF 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:an undivided one-half (1/2) interest in a parcel of land located in the Northeast Quarter (NE 1/4) 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 South 51° 27'37" West 962.37 feet to the TRUE POINT OF BEGINNING; thence South 00°07'23" West 58.72 feet; thence on a 1038.31 foot radius curve left 394.79 feet, the long chord of which bears South 10°46'10" East 392.42 feet; thence South 21°39'44" East 117.19 feet; thence on a 590.80 foot radius curve right 170.76 feet; the long chord of which bears South 13°22'54" East 170.17 feet; thence North 89°10'04" West 1405.83 feet; thence North 00°40'19" East 1325.84 feet; thence South 89°11'47" East 779.00 feet' thence South 00°48'13" West 200.00 feet; thence South 89°11'47" East 498.11 feet; thence South 61°42'30" West 411.30 feet; thence South 00°48'13" West 210.11 feet; thence South 89°11'47" East 325.26 feet to the TRUE POINT OF BEGINNING.

(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 r ight 114.47 feet, the long chord of which bears S 09°54'46" E, 113. 33 feet; thence along said r ight-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 that 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.

Martha Leigh Kuhn ("seller")

7/11/90 date

213 - 1076

William John Kuhn ("seller")

900711.3 date

Notary Public for the "seller"

Mark Burchett ("seller")

7/9/90 date

Notary Public for the "seller"

OFFICIAL SEAL
MARSHA TEMKIN
NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXP. DEC. 15,1992

Jeff Dowell ("purchaser")

7/11/90 date

Patti Dowell ("purchaser")

7/11/90 date

State of ~~New York~~) Oregon
County of ~~Monroe~~) SS.: Deschutes

On this 11th day of July, 1990, before me personally appeared Martha Leigh Kuhn and William John Kuhn, 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.

Notary Public exp 1-1-94

7-11-90 date

PATRICIA L. WAGNER
NOTARY PUBLIC
STATE OF OREGON

Note: Please send all subsequent tax documents to:

Jeff Dowell
422 Lakeshore Drive
Hilton NY 14468

213 - 1077

STATE OF OREGON)
COUNTY OF DESCHUTES) SS.

I, MARY SUE PENHOLLOW, COUNTY CLERK AND RECORDER OF CONVEYANCES, IN AND FOR SAID COUNTY, DO HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS RECORDED THIS DAY:

90 JUL 11 PM 12: 31

MARY SUE PENHOLLOW
COUNTY CLERK

BY. _____ DEPUTY

NO. 90-20037 FEE 25

DESCHUTES COUNTY OFFICIAL RECORDS

EXHIBIT A-10
4 of 4


PUBLIC NOTICE
EXHIBIT A-11
1 of 6

EXHIBIT A-11
2 of 6


PUBLIC NOTICE
This cluster of properties does not have the required Homeowners Agreement and Homeowners Association
Failure to obtain both before purchase of parcels within this cluster development may result in your financial hardship. If you are a
you are on the Joint Property and do not have permission of ALL owners
then you are trespassing
As long as there is no agreement between the owners, any tenants or
renters are subject to ORS 105 and rents will be due both owners


EXHIBIT A-11
4 of 6


EXHIBIT A-11
5 of 6


EXHIBIT A-11
6 of 6

Peter Gutowsky

From: William Kuhn <William@RiskFactor.com>
Sent: Wednesday, January 27, 2016 4:56 PM
To: Peter Gutowsky; Nick Lelack
Cc: Smith Sharon re Dowell; wkuhn@riskfactor.com
Subject: Kuhns Docs 1
Attachments: 20160127 Kuhns to County A Way Forward.pdf; 20160127 Regarding the Dowell Appeal of DR-13-16 247-14-000165-A Kuhn Legal Opinion.pdf; Pile of illegally dumped Fill between 438 & 529 feet back from Sisemore Road must be removed .pdf; 20160102 Purser Comments regarding the Kuhn documentary film.pdf; 20160113 Serrapede Comments regarding the Kuhn documentary film.pdf; 20160110 Jordan Comments regarding the Kuhn documentary film.pdf; dd 031 20070524 1611190000100OT20070524162816.pdf; 19920204_Draft-1_LM-Supporting Doc with map Dowell to Cibelli with notes added.pdf

20160127 Kuhns to County A Way Forward.pdf
20160127 Regarding the Dowell Appeal of DR-13-16 247-14-000165-A Kuhn Legal Opinion.pdf
Pile of illegally dumped Fill between 438 & 529 feet back from Sisemore Road must be removed .pdf
20160102 Purser Comments regarding the Kuhn documentary film.pdf
20160113 Serrapede Comments regarding the Kuhn documentary film.pdf
20160110 Jordan Comments regarding the Kuhn documentary film.pdf
dd 031 20070524 1611190000100OT20070524162816.pdf
19920204_Draft-1_LM-Supporting Doc with map Dowell to Cibelli with notes added.pdf

--
William Kuhn
INVEST/O - Registered Investment Advisors
PO Box 5996
Bend, OR 97708-5996
541 389 3676
William@RiskFactor.com

"Illegitimi non carborundum" - refers to the continuing acts of Deschutes County

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

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2016 0127 Kuhns to County **A Way Forward** by Leigh Kuhn

"Injustice Anywhere Is a Threat to Justice Everywhere"

Maintenance and Development in our Cluster Development

FACT: In 1987, the year we purchased lot 200 and 50% interest in the wildlife parcel lot 300, we consulted Deschutes County about what we needed to know and do before and after we purchased this property. Home and property purchase is one of the biggest, most important decisions people make.

FACT: We were told by the County we needed to have a lot line adjustment because of the requirement to have 100' side yard setbacks in a forest zone to be able to build, we needed to record the deed restrictions that the original developer, John Barton, came up with in collaboration with ODFW. We got the lot line adjustment and recorded the deed restrictions as a condition of purchase.

FACT: During the lot line adjustment process the issue of the maximum building line was discussed and dealt with prior to purchase.

FACT: The County said our six deed restrictions met the requirements of CU-80-22, our conditional use permit allowing two residential lots in this development. The County also considered them fulfilling the required HOAA.

FACT: Only one of the six deed restrictions, the one on fencing, has anything at all to do with maintenance for the cluster development or maintaining the wildlife parcel, lot 300

TWO OF THE DECISIONS BY THE COUNTY, THE RECORDING OF THE DEED RESTRICTIONS AND MAKING THE MISTAKE REGARDING THE HOAA, ARE THE FUNDAMENTAL CAUSE OF WHAT WENT WRONG FOR US AND FOR THE EXISTANCE OF OUR CLUSTER DEVELOPMENT.

Regarding Maintenance and the Wildlife Parcel, lot 300

At the time of our purchase in the cluster, Mark Burchett, the owner of the other undeveloped residential lot, made it plain to us that he had no interest in developing

his lot or in dealing with any maintenance of the wildlife parcel. He was in the process of building a home in Bend.

If we could afford to get a land contract purchase of his lot and/or his 50% interest in lot 300, the ridiculous and impossible 50/50 ownership would cease to exist.

We were trying to get him to consider selling to us or to at least give us first right of refusal when the Dowells came down our driveway. They told us they had, or were buying Mark Burchett's parcel and his 50% interest in the wildlife parcel. They would be absentee owners, they were living in New Yok state.

After the Dowells' Purchase in the Cluster Development

Because the Dowells were out-of-state owners from 1989 through 2013, by default, by necessity, and to protect our interests we were forced to become the Dowells' de-facto property managers, enforcers of deed restrictions, suppliers of aid, assistance and education to the stream of occupants of the Dowells' lot 100.

By default and by necessity, we also shouldered the entire responsibility for lot 300, and still do. While they never thanked us, they were aware they were getting a free ride on our backs. We also kept them informed of issues etc. We got FUD for our efforts which were a constant frustration and drain on our time and resources.

After the Dowells' purchase in the cluster development, we realized the deed restrictions did not, would not, suffice for what the wildlife parcel would require, especially because it was divided in 50/50 interest ownership between the owners of lot 200 and lot 100. Think about it! Whose decisions would prevail?

We needed a HOAA that would include a maintenance agreement for the wildlife parcel – which was a requirement currently ignored by the County.

The County's legal counsel told us there are no County guidelines, requirements or recommendations on HOAAs. They couldn't and wouldn't make verbal suggestions. The six unenforceable deed restrictions are all we had as long as the County declared them our required HOAA. The deed restrictions are still all we have. (see PL-14) We later discovered it wasn't quite true. They did have guidelines. What about the maintenance needs and issues on lot 300, the wildlife parcel especially with a 50/50 interest ownership with the Dowells? The County did not respond.

Ms Smith is wrong in her assumptions about the wildlife parcel, lot 300, and what uses are acceptable, as well as the reason the Kuhns refer to lot 300 as the wildlife parcel. In John Barton's application for a conditional use permit pp05 19800218_Cu-80-22 Barton says, in part…"restrictions for this area have been adopted in accordance with studies/recommendations by the Fish and Wildlife Dept." …and "The 'open space' common land may not be used for such joint adventures as a "dirt bike track' or any such activity as would be deemed detrimental to assuring wildlife objectives within the deer range." and… "A document stating these requirements/restrictions on the common property would be a part of both the land sale contracts involving the 4.3 acre parcels. This part of the sale contract will assure the maintenance of the common property in accordance with the interests of the Fish and Wildlife Dept."

We will never allow the wildlife parcel to be turned into a golf driving range as we will never allow our ownership in Tax Lot 300 to be diminished.

What We Did

We asked the Dowells to participate in coming up with a HOAA that would include dealing with the wildlife parcel. We were unaware of the Dowells' recorded sales contract fraudulently claiming 100% ownership of lot 300 and a section of our residential lot.

What the Dowells Did

Initially they saw no need for a HOAA agreement and refused to participate. They also refused to deal with maintenance on the wildlife parcel beyond paying their 50% share of this parcel's property tax.

Eventually the Dowells said they would consider participating in a HOAA …if we would agree to get rid of the deed restrictions, especially the one restricting all owners to not replace with new dogs after the dog(s) they owned at the time of their purchase into the development.

Because of the County's continuing position that the deed restrictions were also our HOAA and that they met the requirements of our conditional use permit, we declined

the Dowell's proposal. We did not want to lose either the ODFW recommended restrictions on our development or chance losing our conditional use permit.

In 1997 we tried to engage the County in pushing the Dowells toward an acceptable and necessary HOAA that also dealt with maintenance on the jointly owned parcel.

The County not only declined any assistance to us, but they gave the Dowells an occupancy permit on their garage/guest room structure whose legality on its side yard setbacks, maximum build line, and landscape management plan, LM-92-9 was being contested. The Dowells never occupied this structure, instead offering it to an endless parade of renters, "invitees" and friends.

Maintenance and Development of the Cluster Development

After the Dowells' purchase, we brought up the maintenance and development issue of bringing in the utilities from over a mile away. The Dowells initially responded in writing they would consider paying a share, but later decided not to pay. They told us they were under no legal obligation to participate.

We paid the total costs of bringing the utilities to the cluster development which included interest on a loan from Central Electric Coop. Our cost for bringing the utilities to the cluster was an additional 60% more than the cost of our property.

In 2014 Deschutes County admitted to us in writing they made an error in 1988 during our landscape management process by misinterpreting our deed restrictions as our HOA agreement.

DESCHUTES COUNTY'S ERROR WAS HUGELY SIGNIFICANT BECAUSE IT WOULD HAVE ALLOWED US, IN 1988, TO GO BACK TO THE SELLER, JOHN BARTON, TO EITHER CREATE AN ACCEPTABLE HOMEOWNER'S AGREEMENT OR TO GET OUR PURCHASE PRICE REFUNDED.

If the County had correctly followed the 1980 original conditional use requirements, the Dowells would have been a non-issue with no ability or leverage or reason to have made 27+ years of our life into a nightmare. It is unlikely they would have purchased here.

What Has Happened to Maintenance on the Wildlife Parcel Which Still Has No Maintenance Agreement.

We did maintenance, in spite of threats from the Dowell's attorney to quit acting as if we owned the whole thing and do not do anything more on it.

Using only environmentally sound methods, and in consultation with ODF, OSU, and NRCS, we dealt with:

- Noxious weeds and cheatgrass
- Trespassing (DSD)
- Fire protection and fire reduction activities (ODF)
- Road egress issues (DSD)
- Pruning low limbs of junipers near our house
- Pruning some of the decadent bitterbrush
- Protecting rare and endangered plant species (OSU)
- Reseeding areas disrupted by vehicles going off the road with bunchgrass seeds
- Property taxation issues
- Access road issues (DRD)
- Controlling damaging insect infestations

We did this where we could access by foot, did it gradually, did it at certain times of year when it would compact soil the least, when it would not start fires, when it would not disturb nesting/rearing activities. We mapped the location and general size of the

junipers and divided the land into sections on the map and then, with stakes, on the parcel for management planning.

None of this is enough. It is a lot of acreage, work and attention for two people. It requires long term management plans that can be implemented to sustain its diversity and viability. We do not have the funding necessary or the tax abatements usually available to people in our situation.

The Dowells continue to pay their half of the property taxes which we were successful in reducing for them. They refused to consider our requests to have the wildlife parcel put into either a conservation easement or in the ODFW program, WHCMP, for situations like lot 300. Unfortunately this ODFW program is currently severely restricted.

Maintenance on the Dowells' Lot 100

There has been negligible maintenance beyond some cutting of juniper limbs in 2000. The only other maintenance we ever saw was as a result of Dan Sullivan's communications regarding the noxious weeds around their structure. Using a blower, Jeff Dowell blew all the cut weeds, seeds and debris from his property onto our property.

During the Dowells' development phase, the driveway was extended well beyond the allowed maximum build line. They bulldozed a new and illegally sited building envelop far into what was designated for wildlife habitat.

- Over several days, where the illegal new building envelop was, big commercial trucks dumped tons of off-site construction debris including concrete rubble, drywall, plastics and metal into a huge pile creating a drop-off. A cistern was built near the edge of the pile. The illegal structure was built near our north property line, even with our house, and next to the debris pile.
- Weeds, both noxious and obnoxious, began filling in the landscape left bare after the bulldozing. That is what is there now, and all there is since the land was cleared.

- Since the occupancy permit was issued by the County the structure has either existed in a state of abandonment or generally abused and misused by the series of people the Dowells allowed to occupy lot 100 over the years. The Dowells had it painted with a blotchy white primer, and left it in that state for years. They were finally forced to paint it a "natural" color by the County.

Just like in any neighborhood, the lack of maintenance on their parcel spills onto our land: weeds, weed seeds, garbage, habitat destruction by people and pet trespassers, theft, vandalism, toxic smoke from burning mattresses in untended bonfires with no available water, motor oil dumped on the land.

What the Dowells have done with their lot 100 negatively impacts our property value, threatens our safety, adds constant work and constant need for vigilance, impacts our viewshed, and reduces our ability to enjoy our property. That is why we recently asked Deschutes County to implement the Anderson plan.

We have done what we can to make this cluster development a good place to live, for the people who live here and for the non-humans.

A Way Forward for the Wildlife Parcel?

We went to the Dowells to negotiate an agreement that would transfer the Dowells, 50% interest in the wildlife parcel to us so the maintenance would no longer be an issue. That went back and forth for years with no resolution. It remains in the impossible 50/50% interest. It is a no win for anyone, a no win for the land, a no win for the state and county goals, and we have no HOAA.

THERE CAN BE NO DECISIONS MADE REGARDING THE WILDLIFE PARCEL, LOT 300 UNTIL THERE IS AN ACCEPTABLE HOAA WITH A MAINTENANCE AGREEMENT IN PLACE.

The Dowells DR appeal now before the Board of County Commission is asking for an arbitrary division of the wildlife parcel in half that would give the Dowells maintenance responsibility and control of use on the half around their parcel, and we would get the half along the road, and south of our structure. The hardest places to

maintain are the ones along the road and along the access drive. The Dowells' DR idea is utterly ridiculous, destructive and unfair for many obvious reasons, a few of them we have listed. And we will not agree to it.

Deschutes County could give thumbs up to the Dowells, and we are very concerned they might because they have chosen to give the Dowells whatever they want beginning with their purchase in 1989, and chosen to do so no matter how they had to contort to do what was blatant, unconscionable, illegal, unfair and stupid. We have never understood why the County chose this path. It's cost us all so much, while doing so much needless and ongoing damage.

The Dowells could also withdraw their appeal which also ends or limits our venue to be heard on our ideas for moving forward. One of which is for the County to hire a permanent ombudsman.

We regret what we could have done and been over the past 30 years if we had never encountered the combination of the Dowells and the Deschutes County government, but we do not regret doing what we fought to achieve here or the gifts we received from the land and its denizens. We believe, with help, we could have a chance to make things work the right way on this cluster development, but this will never happen as long as the Dowells own property in the cluster development.

There is no justice, equal treatment, or legitimacy to anything Deschutes County has perpetrated on us so far. Will Deschutes County help us find a way forward?

It's all so vulnerable. We are far from the only people whose lives are or have been negatively affected by governmental behaviors. Or the effects of governmental acts, which through government's legal shields and prohibitive cost barriers, strongly limits citizens' right of redress . Of the people, by the people, for the people is a very fragile concept.

We are submitting this to keep our legal options and rights active. We know Deschutes County is already well aware of most of what we wrote in this submission for the Dowells' appeal currently in front of the BOCC. We know that many in the County have viewed our documentary film. We hope the BOCC reads all our submitted documents anyway because ethically they should to review before moving forward.

William John Kuhn **Martha Leigh Kuhn**

PO Box 5996 Bend, Oregon 97708-5996 Phone: (541) 389-3676

Wednesday 27 January 2016

Regarding the Dowell Appeal of DR-13-16 247-14-000165-A

Kuhn Legal Opinion

The decisions and the lack of enforcement of County ordinances and land use laws made by Deschutes County over the years beginning with the conditional use permit, followed by the landscape management plan, plus our code violations complaints, and all the appeals which were ruled in favor of the Dowells, essentially gave the Dowells a license to harass us and the ability to ignore both their financial responsibilities and the sweat equity necessary for this cluster development's wildlife habitat parcel to be maintained.

The Kuhns discovered flaws in the original conditional use permit. The Kuhns did everything in they could to work with the County to correct the County's misfeasance and nonfeasance. We didn't know that the County hadn't recorded our final partition plat map as required, a copy of which was given us from the Mylar original at our first meeting prior to our purchase. We also didn't know that the CDD staff were not very well informed on what was required and what wasn't. Why didn't the CDD staff tell us prior to purchase that the deed restrictions were not the required homeowners association agreement and that both were required to be recorded as separate documents?

Before the Dowells recorded their fraudulent Purchase Contract the Kuhns supplied them with copies of ALL the relevant documents the Kuhns had on this cluster development.

It was clearly the intent of the Dowells to use this fraudulent sales contract document to eliminate the no-new-dogs deed restriction as shown by two documents submitted to civil court in both January and February 2000.

From January 2000 20000118_ccDR_Answer OCR color.pdf

AFFIRMATIVE DEFENSE - EQUITABLE ESTOPPEL

8.

Defendants incorporate those admissions and denials set forth above.

9.

Defendants purchased the real property in 1989 after they were convinced and assured that the dog restriction had been eliminated from the property. They have now owned the property for

Page 2 - Answer, Affirmative Defenses and CounterClaims pg: 9187-001\\Dowell.200

BRYANT, LOVLIEN & JARVIS, PC

8.

The land use restriction provisions are vague and unenforceable.

WHEREFORE, defendants pray for a declaration from this Court as follows:

1. That none of the land use restrictions set forth in Exhibit "B" of plaintiffs' Complaint apply to the defendants' property.

2. In the alternative, that only the five land use restrictions set forth in Exhibit "C" apply to defendants' property.

From February 2000 20000217_1stAmendedAnswer_p1-7 with OCR color.pdf

7.

Defendants purchased the property in 1989. In 1996, the plaintiffs began complaining that a dog door which had been put in the house in 1992 and the existence of dogs on the property violated the deed restrictions. Defendants have always made it clear that they intended to keep dogs on the property. NOTE: WALLS WERE NOT CONSTRUCTED UNTIL DEC 1996.

10.

Defendants purchased the real property in 1989 after they were convinced and assured that the dog restriction had been eliminated from the property.

And who exactly convinced and assured the Dowells that they had eliminated the deed restriction in 1989, because it absolutely wasn't the Kuhns.

To us the Dowells' fraudulent purchase contract was the first of a string of events that proved to the Kuhns that the Dowells were unworthy of trust.

The Dowells could have paid for professional advice during their purchase process. Either a lawyer or realtor would have nipped all this in the bud. We believe the Dowells never would have bought property in our cluster development if they had just bought title insurance. But they decided not to, and as a result we who followed the rules have had to pay over a third of a million dollars in legal fees alone just to defend the wildlife area overlay zone and our legal rights. The Kuhns want restitution for these expenses.

The document is fraudulent because by not buying title insurance or obtaining professional help they ended up claiming 100% of the 34 acre wildlife parcel as well as claiming over half of our

property. It was the County Assessor's cartographer who discovered the error. He, the cartographer, had a letter sent to Dowell saying that the County would not accept Dowells' purchase contract as valid.

We were stunned in 2007 when County Legal Counsel initially ignored our statement in conjunction with the Dowells' M-37 (Measure 37 claim) hearing that the 1989 purchase document was used as evidence and proof of purchase. We were arguing that using a document that one division of County called invalid was being used by another division of County that claimed it was valid. The 1989 document was a fraud because it claimed things that were not true. It took a few days of searching by Assistant Legal Counsel to find a document that could be used to prove the Dowells' claim.

The County's Dial system page 1611190000100OT20070524162816 for the Dowells shows the document produced by BLJ. This is the document we were referring to when we raised our objection.
Please see attached dd 031 20070524 1611190000100OT20070524162816.pdf
You will also find the other documents and copies of emails subsequent to the hearing on the Dial system.

Writing about the M-37 Claim brought by the Dowells also allows us to show where the BLJ lawyer made the statement that the Dowells built where they did to get a better view.
See 20061129_M-37_Claim_LovliensStatement_DowellsWantBetterViews OCR yellow.pdf
This is page 7 of County Dial doc dd 026 20061129 1611190000100OT20061129161154.pdf

this is page 7 of County Dial doc dd 026 20061129
1611190000100OT20061129161154.pdf

Additionally, the purpose of siting the dwelling in its current location is to take advantage of the views. Requiring the siting of the dwelling to be within 300 feet of the public road would cause a significant hardship for the Claimants.

When did CDD decide it was acceptable to ignore a landscape management plan and move the location of the structure being constructed based on wanting a better view? Why didn't CDD require a new landscape management plan just like it says in the Dowells' LM-92-9?
"1. Approval is based upon the submitted plan. Any substantial change in the plan will require a new application."

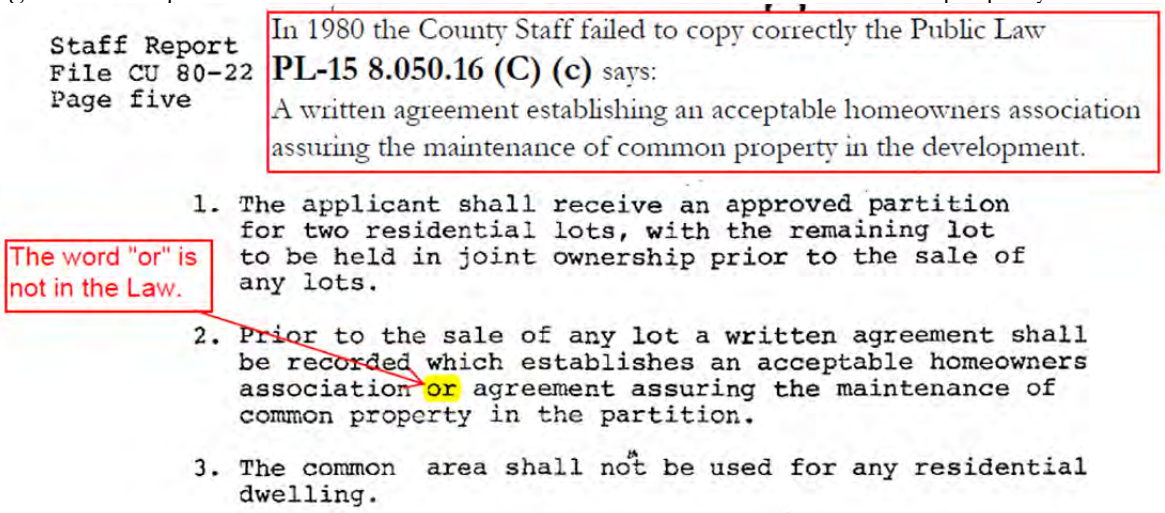
As shown in our documentary film ***A-WayForward.com***, because Deschutes County has been so vindictive towards us over the past 19 years in our efforts to protect the wildlife habitat within the Tumalo Winter Deer Range, only a few locals are willing to put their names to a petition or even pen a letter to the Commission. The other letters of weight are from outside our local area. See attached letters from Purser, Serrapede, and Jordan.

Jeff and Pat Dowell do not understand that ownership is not only about rights; it is equally about obligations. We can argue about exactly what those obligations should be, but existence and importance of the obligations of ownership should not be in doubt. We argue that the soundest normative foundation of those obligations is human flourishing. And here in the winter deer range that also includes the wildlife flourishing.

As long as we can't legally sell our property, as long as realtors refuse to list our property, as long as lenders won't lend us money based on our supposed property values, and as long as the Dowells own their property here on Sisemore Road we can assure you, we are not flourishing. Until Deschutes County reverses its decisions and restores to us our property rights and our right to the protections given by County enforcement of their codes we are not healthy, we are not prosperous and we do not have peace.

Our legal positions are simple:

- Every decision made by Deschutes County relative to our conditional use permit (CU-80-22) forward, has been fruit from the poisonous tree. The original CU-80-22 permit was never perfected.
  1) The Planning Director was charged with recording the final partition plat map and didn't.
  2) The deed restrictions that were part of the CU application process weren't recorded prior to 1987.
  3) The County CDD staff failed to copy the wording correctly from PL-15 when they inserted the word **'or'** into the line "which establishes an acceptable homeowners association ***or*** agreement". PL-15 8.050.(16).(C).(c) says: "A written agreement establishing an acceptable homeowners association assuring the maintenance of common property in the development." There is no word 'or'.
  Therefore: A homeowners association is required and that requires an agreement. AND the agreement requires a section in it to assure the maintenance of the common property.



- Because Deschutes County failed to provide proper, equal, and fair land use development within our cluster development (the very Purpose of Chapter 18), the County should selectively restore all of our property rights as they were at the time of our purchase while denying any and all further development on the Dowells' property because of these errors **or else the County buys out the Dowells**;

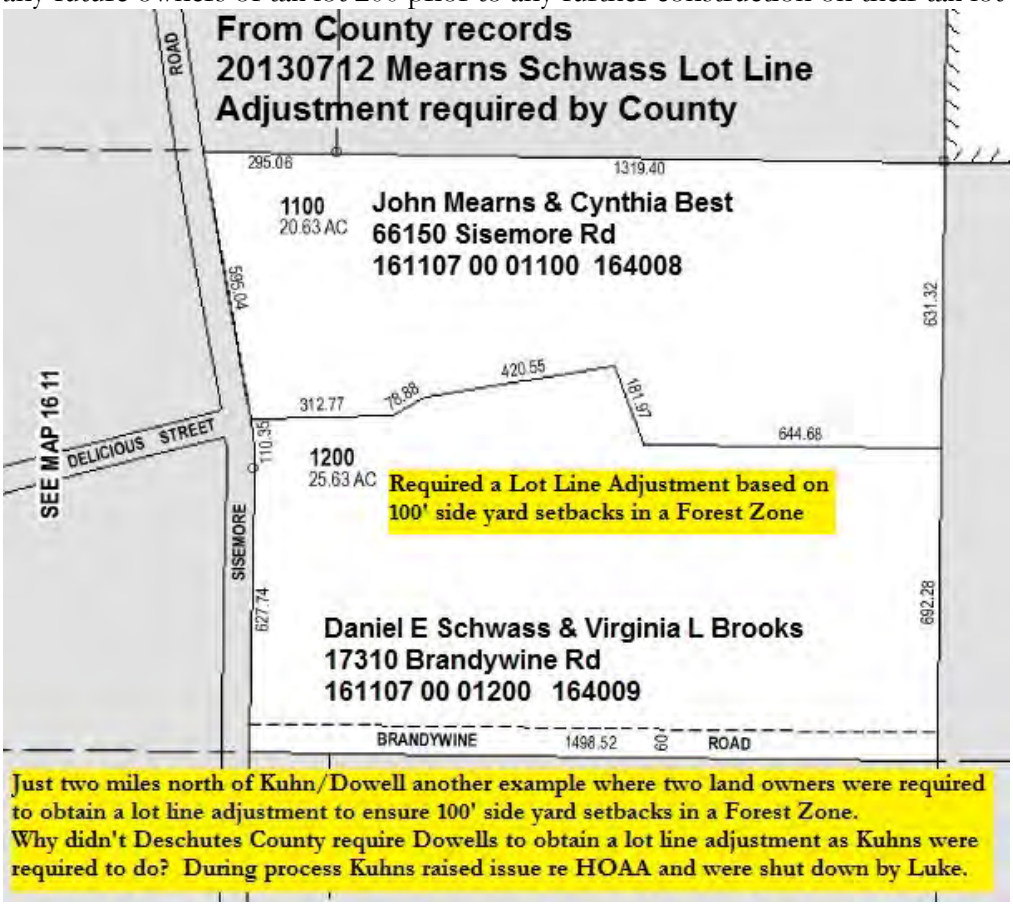
18.04.020. Purpose.
A. **The intent or purpose of DCC Title 18 is to promote the public health, safety and general welfare** and to carry out the Deschutes County Comprehensive Plan, the provisions of ORS 215 and the Statewide Planning Goals adopted pursuant to ORS 197. DCC Title 18 is to establish zoning 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;**

C. **To regulate the placement, height and bulk of buildings;**

- Because Deschutes County admits that Deschutes County made an error regarding the requirement to have a homeowners association agreement in place prior to the sale of any parcel, Deschutes County must compensate the Kuhns and the Dowells for allowing this dispute to balloon out of control;

  - Because Deschutes County required the Kuhns to obtain a lot line adjustment in order to have a legally buildable lot considering the 100 foot side yard setbacks which the County imposes on all other properties (Mearns, Best & Schwass, Brooks) within forest zones, the Dowells or any future owners must and shall obtain a lot line adjustment from the Kuhns or any future owners of tax lot 200 prior to any further construction on their tax lot 100;



- Deschutes County was required to have recorded the final partition plat map with its maximum building line indicated on the map and based on its own process and procedures as stated by Rick Isham in his 1981 memo (see attached 19811106_ Isham To Anderson Setbacks On Plat_) to the Planning Director. Deschutes County must enforce the line on that map, the Dowells must obtain a lot line adjustment from the Kuhns prior to any further construction on their tax lot 100. In the alternative the County should impose the Anderson Plan.

- Deschutes County must impose on the Dowells the obligation of building within the bounds of where they were LEGALLY permitted to build, based on the terms and conditions of the original CU, and the County's public law and ordinances in effect when they bought their property. That means they literally cannot have the structure where it is. Just as there was with the Kuhns, there was no buildable square inch on either parcel prior to the Kuhns' obtaining their lot line adjustment. We offered Burchett a lot line adjustment at the time of our purchase, he didn't want to pay for it. We offered Dowells a lot line adjustment at their time of purchase in exchange for help with utilities, they didn't want to pay for it. (see attached diagrams)

- The Kuhns are entitled to equal protection under the law. Since they haven't received that protection, since the Dowells have been granted legal cover for their illegal actions **only after the fact**, the Kuhns will not and cannot be expected to endure such flagrantly unconstitutional actions moving forward.

- The Dowells and the Dowells' attorneys at Bryant, Lovlien and Jarvis all claim and demand that the Dowells and the Dowells' invitees, tenants, renters, employees all have free and unfettered access to the benefits and privileges of the wildlife parcel which has no required maintenance agreement to protect it or the owners from lawsuit etc., while flat out refusing to accept any of the responsibilities of ownership, sans paying property taxes. Deschutes County must recognize and support the use of ORS 105.820 by the Kuhns to obtain a portion of the financial benefits the Dowells have enjoyed, and to use this statute toward obtaining their homeowners association agreement.

- Because Deschutes County was willing to accept the Dowells' fraudulent documents until the Kuhns raised significant objections, that were submitted by the Dowells as legitimate documents, the County needs to review any and all of the development documents submitted by and relied upon by the County in granting and permitting all past and future development on the Dowells' property. In particular the 1992 landscape management plan submitted by the Dowells which claimed what was to be built, where it was to be built, and with what materials it was to be built. See attached LM documents including the letter from Dowell to his general contractor.

- The Dowells' argument regarding Collateral Estoppel has been ignored or rejected on at least five other occasions, and in this case the Kuhns can prove beyond any doubt that the previous decision was either fraudulently arrived at or the County Attorney gave false and/or misleading and/or contradictory testimony before a judicial tribunal which William Kuhn even predicted to the Board in 2010.

- The one sustainable argument against Collateral Estoppel which the Dowells' attorney from BLJ put forth is that; if a prior ruling can be shown to be unjustly arrived at, such as in all the cases, ruling, and judgement made in favor of the Dowells, there was a taint of fraud, or obfuscation or misfeasance, or nonfeasance, or where it is possible to show that an attorney gave false or

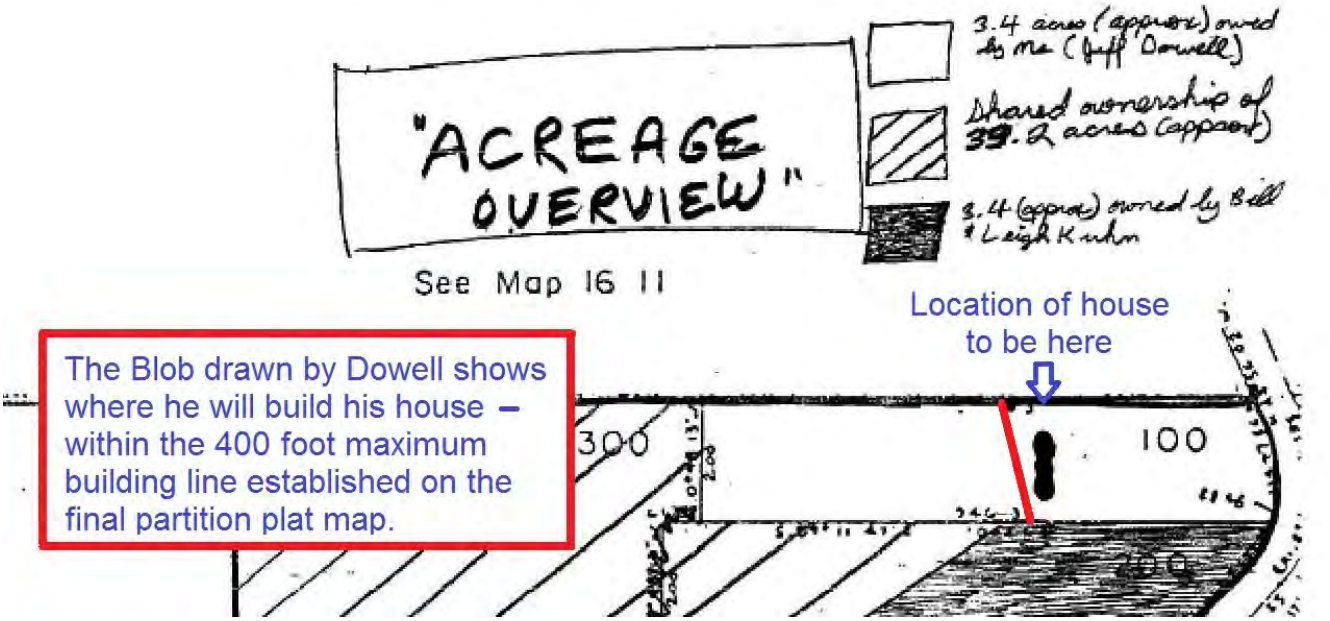
misleading evidence to a judicial tribunal or some other similar miscarriage of justice, then Collateral Estoppel goes away and the current judicial tribunal or some other similar miscarriage of justice, then Collateral Estoppel goes away and the current judicial tribunal is free to reverse prior rulings.

- Estoppel matters except for when it can be shown that something was fishy about the elements involved in the decision(s). In our case both the Dowells and the County have been the two roots of the same poisonous tree..

  1 There is the County's CU-80-22 root – a Conditional Use Permit that was flawed in at least these four ways: adding the word 'or', no HOAA, deed restrictions not recorded, and failure to record the final partition plat map.

  2 There is the Dowell root of the poisonous tree – At least two documents that have been proven to be false and misleading.
  A) the Dowells' purchase contract which intended to eliminate the number one deed restriction along with claiming property that wasn't theirs, (in the record in numerous places)

  B) the Dowells' LM-92-9,



which claimed they would build between the maximum building line on the acreage overview map and Sisemore Road, where instead, they did a bait and switch for what was actually built - shape, size, height, material. This was mistakenly approved by the Building Division but was not given prior approval by the Planning Division which required a NEW application if there were substantial changes,

C) the Dowells imported several truckloads of fill well beyond the maximum building line,

D) the Dowells also, without a permit, constructed a room in the garage and have used it as a bedroom from shortly after obtaining their finalized permit. Deschutes County has the authority and the ability to require the removal of this room yet continues to allow its use.

- Because of the assaults, theft, insults, and harassment by the Dowells and their proxies against the Kuhns, and because Deschutes County failed so miserably in not preventing by enforcement these ugly actions perpetrated by the Dowells, and because Deschutes County has persistently swept the dirt under the rug, Deschutes County must accept the fact that the Kuhns have no intention of ever signing an agreement with the Dowells unless it also includes a provision that the Dowells are no longer owners of tax lot 100 and their one half interest in tax lot 300.

- Because we have been forced to deal with the Dowells' attorneys that should ethically have been conflicted from accepting the Dowells as their clients, and the attorneys at County who have on more than one occasion given false and misleading testimony before judicial tribunals, we have had to deal with a playing field that was and is stacked against us.

- Because Deschutes County and the Dowells are both interfering with our right to conduct interstate commerce, Deschutes County shall change its focus from denying the Kuhns their ability to refinance their loans, and begin enforcing the codes and protections of wildlife habitat which the Dowells have so flagrantly violated. ("The Dowells built where they did because they wanted a better view", as stated by Robert Lovlien, attorney for the Dowells. See attached.)

- Because the Kuhns question whether this County is capable of not giving the Dowells preference and bias based on the repeated fact that it was the County's errors, omissions, nonfeasance, and misfeasance that allowed the Dowells:

  1) to develop their property in violation of Forest Zone 100 foot side yard setbacks.

  2) to develop their property in violation of the final partition plat map.

  3) to build a bedroom in the garage in violation of building and safety codes and then not force the Dowells to remove said room which has been used as a bedroom on occasion since.

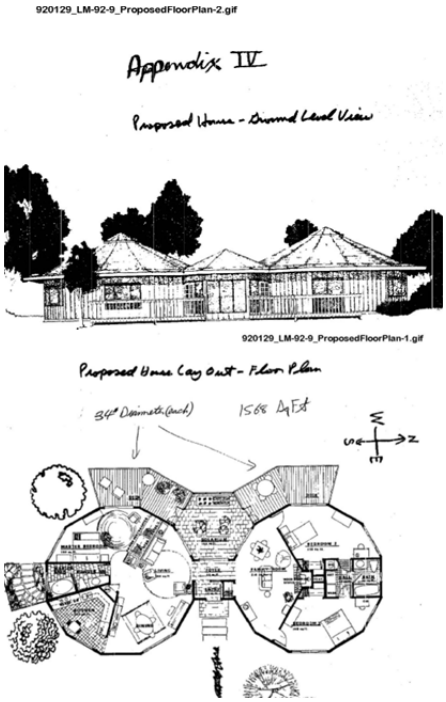
  4) to ignore the several violations and issues of non-compliance with the Dowells' LM-92-9 such as the size, shape, texture.

  5) to gave the Dowells free reign to conduct their campaign of FUD against the Kuhns as is represented by the documents and emails which will be added to our website ***www.A-WayForward.com***, labeled **How the Dowells Poisoned the Neighborhood**.

- Because the Dowells did not do their due diligence in their purchase, in their development of their property, and in their respect for the Kuhns' rights.

- Neither the County nor the Dowells are able to show that the Dowells ever had signoff by County to alter their landscape management plan or import tons of offsite construction debris fill well beyond the 400' mark as shown on the final partition plat map.

The Dowells claimed they would build this:



But built this 1950's style gas station instead:

Just exactly how did that structure pass muster? The Planning Department did not sign off on the radical change of design. Neither the Dowells nor Planning can show proof of such.

According to the Dowells LM-92-9 Condition of Approval they were required to submit a new landscape management application based on the following:
"1. Approval is based upon the submitted plan. Any substantial change in the plan will require a new application."
The code violation complaint file regarding this issue has still not been resolved. When we inspected the complaint file there are NO notes or findings regarding such in the file, so our interpretation of code is this: this nuisance needs to be corrected by tearing the structure down.

A three decades long nightmare

Deschutes County must address each of these issues raised as it considers a solution. The County ought to do a full scale investigation into how this situation developed, and how the actions of the Dowells primarily, and decisions made by both the Dowells and Deschutes County affected land use regulations. We encourage Deschutes County to find ways to fix the situation that the Kuhns fought to fix for the past 30 years.

Or the County should pass on this appeal. If you pass though, then we want to know how Deschutes County can continue to ignore the broad impacts on these crucial financial, safety and development oversight issues.

Hope trumps rationality.

It exists even when things are obviously hopeless. Denial doesn't erase it. Hope doesn't need our acknowledgement for it to exist. It will keep us going until we die. Who knows what happens to hope after that.

We kept trying over the years we struggled to live here to make things work. If we could just find the right words… if we could just find the right allies… if we could use our actions by demonstrating our caring and our desire to do the right thing beyond just our own interests… devolved into if we could just find the right attorneys, the right venues… the right new employees at Deschutes County… the right new set of Commissioners, turned into loss of choices, loss of time, loss of health, loss of confidence, loss of friends, loss of business opportunities, loss of much of our ability and our opportunities to enjoy life, loss of the time, energy, and heart to volunteer any more in our greater community. And finally the unacknowledged and acknowledged sense of hopelessness that still won't affect the existence of hope.

We still have unjust governmental restrictions imposed on us, our home and property with demands that are dependent solely on the Dowells willingness to cooperate or to not cooperate. We still can't refinance our property. We have filed again to appeal our property taxes for the 2015-16 tax year. And we will file again next year because as of the first of January 2016 we still can't refinance our property. That means we will have the right of subpoena and the right to ask questions over and over again until someone at Deschutes County finally gets it.

Our documentary film is now available in high definition by going to our website at www.A-WayForward.com. We are also putting relevant documents on the website that those who watch the film are asking to see.

The Dowells are one root of the poisoned tree. We want the poisoned tree excised from this cluster development and only Deschutes County can do that. We believe Deschutes County must buy out the Dowells.

One further concern: –

The Kuhns believe that this DR process has been unfair to them in this regard; the Dowells have been in total control of the process which we opposed from the beginning. The Kuhns were not allowed to be an equal party in deciding the DR question and not an equal party regarding withdraw from the case. It is the Dowells prerogative to withdraw this DR at will. That means we may not be able to share with the County our legal arguments for fear of losing this current forum. If we divulge our civil case to the County we are also divulging it to the Dowells and that is not fair to us. Again, the County by not enforcing its own code has put us at risk financially because of the Dowells' illegal acts.

If the Dowells were to withdraw their appeal prior to a decision by the County then we, the Dowells, and the County are all left with the Hearings Officer's decision which is not entirely bad

for us. It keeps the Dowells from developing their property further in the location that they were not entitled to develop in the first place. See attached descriptions and series of site maps.

If this appeal is withdrawn by the Dowells prior to the County's decision and we have no other venue to put our case before the BoCC we will ask for our own DR which will by default include the Dowells. This is what we have been trying to do since 1997 and every time we asked for a DR regarding a homeowners association agreement it was denied by the County. In that respect we are grateful to the Dowells' attorneys at Bryant, Lovlien and Jarvis for opening this doorway for us.

Does Deschutes County perceive a way through this situation to a solution? Or will the County work with the Kuhns who are the only party that has fulfilled its commitments to work for the protection of the wildlife habitat as it was intended and envisioned by John Barton and Mike Golden of ODFW?

FOR THE KUHNS AND THE COUNTY TO CONSIDER – NOW:
According to the 2010 BoCC decision, neither of the dwellings were lawfully established until there is a homeowners association agreement signed, recorded and approved by the BoCC. (Please See the Record)

If that is the case, in our opinion that means the County can take whatever actions necessary to restore, destroy, or force corrections of any and all previous planning and building decisions.
The Kuhns are asking the County for consideration of the following:

1. Reinstate the 400' maximum build line on lot 100. OR,

2. Change the method of measuring that Commissioner Luke and Director Reed used in 2000 to a maximum of 300' as was the law beginning in 1992.

3. Acknowledge that since John Barton failed to complete or perfect his duties as the developer of the cluster by 1987 that Leigh and William Kuhn who purchased their property in 1987 are the actual and true developers by default, and the only owner/residents ever in the cluster development. And the only party that recorded the deed restrictions, protected and maintained the wildlife parcel, that relentlessly sought to create a homeowners association agreement, that attempted to perfect the duties and requirements of developers, that paid the entire costs of bringing the utilities to the development.

4. As developers, acknowledge that the Kuhns have the unilateral right to create a HOAA, which includes maintaining lot 300 and fulfills the intent and requirements of CU-80-22, sign it, record it, and submit it to the BOCC for approval.

5. Acknowledge that, under County code, this cluster development is considered included under subdivision requirements for cluster developments as required by PL-15.

6. The County, including the Sheriff's Department, and the DA, conduct an investigation whose purpose is to find out what went so wrong, was there malicious intent, and answer the following questions:
   - Why didn't the Sheriff's Department not investigate the pipe-bomb immediately, or turn the investigation over to the State Police which is the proper protocol.
   - Why did the Dowells and their hired thug know four months before we were told that the DA wasn't going to prosecute the Dowells' contractor?
   - Why wasn't Mr. Dowell charged with malicious criminal harassment for stealing our property, and conspiring with others to cause us FUC?
   - Why did the County legal staff refuse for four years to record the final partition plat map when it was the County Counsel who authored the law.
   - Why the County thinks it can continue to defraud us of our right of enforcement when it knows full well that we did nothing wrong and the Dowells did nothing right?
   - Why Deschutes County isn't doing more, putting more pressure on people who flagrantly are continuing to violate building and safety codes?

7. Money Issues and Restitution for the Kuhns must be discussed with the Kuhns, not dictated to by the County who enabled this situation.

8. Consider the suggestions provided in our submissions by interested parties other than the Kuhns.

OR: Do the simple, easy remedy. Buy out the Dowells.

The Kuhns are requesting these four items:

1 -- Give the Kuhns the original developer's prerogative of creating the conditions and terms of the required Homeowners Association Agreement which the County must approve so that the Kuhns can then record as THE HOAA for this cluster. The Dowells can then negotiate with us if they wish to stay and under what conditions or they can sell.

2 – Restore all right and restrictions to the entire cluster as they were when the Kuhns purchased in 1987. If the Dowells want to move forward with development they must negotiate a lot line adjustment just as the Kuhns had to with Mark Burchett and John Barton in 1987, and just as on the John Mearns, Cynthia Best, Daniel Schwass, and Virginia Brooks parcels with in the wildlife area overlay zone within a Forest Zone, just 2 miles north of us .

3 – Deschutes County appoints a permanent ombudsman whose first job should be to investigate, in detail, the development of this cluster to determine culpability or turn this investigation over to DLCD for them to do.

Or, what might be the least expensive option…

4 -- Deschutes County must buy the Dowells out NOW.

William Kuhn
20160127.3

20160102 Purser Comments regarding the Kuhn documentary film.pdf

20160102 Letter from Tim Purser regarding the Kuhn – Dowell – Deschutes County problem.

To Whom it may concern:

I've known Bill for over 40 years. Some of his clients are mine and some of my clients are his clients.

I am currently the president of a homeowners association of 159 homes located in Texas. I have held this position for 10 years consecutively. I have seen many disagreements between neighbors, between the association and homeowners, violations of the articles and or the bylaws of the association. I along with the other Board members have had to make difficult decisions but we have done so fairly, honestly and with total justice. The problem with this horrible situation that the Kuhns have been placed has simply mounted and mounted.

They could have moved anywhere in Oregon but they chose Bend and on a lot away from the maddening crowd on Sisemore Road. They built their dream home following all laws set forth to them by Deschutes County. They did all they were required and adhered to all restrictions placed upon them. So what is wrong with this picture?

Following this matter for many years and having seen homeowner problems firsthand for the last decade, my vision is clear and untainted.

(1) The Kuhns followed the law and built as they were required. This is non disputable.
(2) The Dowells built on their shared property but did not follow the law as was required of the Kuhns.
(3) The Dowells were permitted to violate the standing laws for building on this property. This begins the problem.

This violation could and should have been halted at the very beginning. This did not occur. There are now 2 (two) violations: the Dowells and the County. The Dowells can point to the County for approving their building and the County can claim supreme authority by changing the law.

In both cases it is absolutely not fair to the Kuhns.
Someone is at fault here and it is certainly not the Kuhns. I will not even get into the actions by the Dowells or someone they appointed for their malicious behavior in so many ways.

As I see it, the problem lies with the County for allowing this error to occur and for its continuation.

There are remedies to indemnify the Kuhns:

(1) Remove the current illegal structure on the Dowells' property and place it where it does not violate the original land use restrictions;
(2) Remunerate the Kuhns for all their expenses to resolve this problem and remove any and all restrictions placed on them by a vindictive government while they were trying their best

to protect the original land use restrictions. The Kuhns must have the ability to both legally sell their property and refinance their current mortgage;
(3) Remunerate both parties for their expenses and relocate the building in violation of restrictions;
(4) Deschutes County should purchase the Dowells property and eliminate the building in violation. Then turn the property over to the Kuhns as restitution to them.

After all these years it is high time to conclude this unfortunate situation. And it is high time for all parties to address this together and come to an agreeable solution. The County needs to make this right. And I know that the attorneys fighting this know this to be true in their heart. Make it right. You are the governing board. And you know this error needs to be rectified. As the president of a homeowners association that is my opinion based on a decades experience.

Tim Purser,
Stock Broker,
Dallas, Texas

On 1/8/2016 10:29 PM, [redacted] wrote:

Very well expressed. People who understand the mechanics of disputes such as Tim are invaluable, and who can offer solutions instead of simply pointing blame. So gratifying to see this, thanks for sending. Making the story available outside "the system" is a good way to shine light on the situation.

[redacted]

20160113 Serrapede Comments regarding the Kuhn documentary film.pdf

Kevin Serrapede

3803 NE Purcell Blvd

Bend OR 97701

January 13, 2016

Re: William and Leigh Kuhn

Hello,

I have lived and worked in Deschutes County since 1978. I have had interaction with both the City of Bend and Deschutes County concerning building codes. I was on the Broken Top Community Association Board for three years as well as two additional years on the Board of a Broken Top Neighborhood within the broader Community Assoc. My final position was Treasurer.

I have known Bill and Leigh for twenty five years. They are of high moral character, are hard workers who treat their clients fairly and equitably without exception. They are law abiding citizens on all levels. Even without these qualities, they are entitled, as are all citizens, to "equal protection" under the law.

I am including the printout of the website page from Deschutes County pertaining to Code Enforcement and am asking you to respectfully consider the following three questions:

1 Does the County consider some actions by the Dowells to be in violation of the Codes? It would appear the Dowells have since actions have been taken versus the Kuhns by the County were based on the Dowells actions.

2 Would you please review the Code Enforcement Mission Statement as posted and review the facts in this case to determine if the operation principles as listed were adhered to: namely the "consistency" and "flexible in timing, not in Code".

3 Lastly, if there is a determination of a Code violation occurrence, has the process been followed as outlined pertaining to Code violations (edited for brevity):

"Sheriff's Office sends or delivers a warning"

"Sheriff's Office issues a Citation(s)"

"Injunction

Contempt of Court

Daily Fines for Non Compliance

Property Lien

Foreclosure"

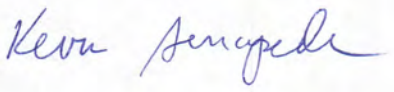
Please review these items in light of the fact that the Kuhns have been harmed in numerous ways, all the time being law abiding citizens who are following the process as established by the County.

For simplicity sake, please refer to the document prepared by Patricia Gainsforth and named in the video presented here today. This document, prepared by a long standing and extremely well respected Realtor identifies one, and only one of the many issues.

It is abundantly clear that the Kuhns are not asking for any special treatment, they are only asking to be treated equitably.

Please consider this request as an appeal to restore the economic and living benefits that the Kuhns worked so hard to accomplish, all the while adhering to the County's requirements to the "letter of the law".

Respectfully,



Kevin Serrapede

Code Enforcement

The mission of code enforcement in Deschutes County is to protect the health and safety of the county's residents and visitors, and the livability of the community, by assuring compliance with the county's land use, environmental and construction codes. The county will assure code compliance both by encouraging voluntary compliance and by punishing code violators who do not comply.

The Community Development Department administers the Code Enforcement program for Buildings, Environmental Soils, Land Use and Solid Waste. The division consists of two code enforcement technicians and a law enforcement technician from the Sheriff's department.

Deschutes County Code Enforcement operating principles focus on:

- Citizen complaints
- Voluntary compliance emphasis
- Consistency
- Flexible in timing, not in code

When a code violation is identified every effort is made to work with the property owner to resolve the issue. If all efforts are exhausted it's necessary to start the enforcement process which proceeds as follows until issue is resolved:

- Sheriff's Office sends or delivers a warning - if the issue is not resolved in the specified time
- Sheriff's Office issues a Citation (s) - if the issue still continues
- Injunction
    - Contempt of Court
    - Daily Fines for Non-Compliance
    - Property Lien
    - Foreclosure

Frequently Asked Questions

20160110 Jordan Comments regarding the Kuhn documentary film.pdf

On 1/10/2016 6:49 PM, Ralph Jordan wrote:

Hi Bill,

I don't know if this will help, but felt like writing it for what it might be worth. I do wish you and Leigh the best this week. May you get all you deserve and more. Let me know if there is anything more I can do.

By the way...I watched the video 3x, and I can't figure out why, but I still missed your reference to the one inch!

Good luck,

Ralph

Ps. Most market indices sure look like broad tops with head and shoulder type formations. I see you are calling for a pop by your indicators. After that, if it comes, things could get very dicey if support lines around the shoulders fail. That's what I am seeing anyway.

January 10, 2016

Dear Deschutes County Board of Commissioners,

I have known William Kuhn and his wife Leigh since the summer of 1990. I actually had a small hand in wiring the electrical outlets in their beautiful home. Over the years I have seen how much Bill and Leigh care for the environment. One would be hard pressed to ever find better stewards to protect the precious acreage and wildlife surrounding their home.

I sincerely hope the Board will consider the decades of years of hard work and honest effort that the Kuhns have put into their property and in meeting all the restrictions required in the purchase of their land. And I trust the Board will recognize the integrity of the Kuhn's and deal with them in good faith to reach a satisfactory and fair maintenance agreement that will allow the Kuhn's full rights to their property.

Thank you for your time.

Sincerely,
Ralph Jordan
1823 Sunrise Drive
Anchorage AK 99508

On 1/11/2016 8:23 AM, [redacted] wrote:

Hi William,

I checked out your video. Wow, this is really amazing. What an ordeal! And such arrogance and incompetence you have endured.

Thanks for sending it. I hope you and your wife are well.

[redacted]

dd 031 20070524 1611190000100OT20070524162816.pdf

CDD COVER SHEET FOR SLR

05/24/2007 16:28:16

M37-06-145 CONTRACT - DEED, VOLUME 193, PAGES 75-78
M37-145

OT
1 PAGES

FILE ID	16111900001000T20070524162816
TAXMAP	1611190000100
SERIAL	163466
DIVISION	OT
SITUS	65595 SISEMORE RD
HOUSE#	65595
STREET	SISEMORE
CONTENT	M37-06-145 CONTRACT - DEED, VOLUME 193, PAGES 75-
RECORD ID	M37-145
LOCATED IN	DATE FILE

Cover Sheet Identifier

AHJKMTWX

89-24952 193 - 0075

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:

(1) "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" W 117.24'; thence along said right of way line on a 194.18' radius curve right 61.01', the long chord of which bears S 55°30'22" W 60.42'; thence N 89°11'47" W 826.06'; thence N 00°48'13" E 200.00'; thence S 89°11'47" E 61.23' to the TRUE POINT OF BEGINNING containing 3.6+ 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 230. 88 foot radius curve r ight 114.47 feet, the long chord of which bears S 09°54'46" E, 113. 33 feet; thence along said r ight-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 that 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.

193 - 0077

Mark Burchett 9/20/89
Mark Burchett ("seller") date

Joyce A. Stran
Notary Public for the "seller"

JOYCE A STRAN
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMM. EXP. AUG. 29, 1990

Jeff Dowell 9/6/89
Jeff Dowell ("purchaser") date

Patti Dowell 9/7/89
Patti Dowell ("purchaser") 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.

Beverley J. Goodell 9-7-89
Notary Public date

BEVERLEY J. GOODELL
Notary Public, State of New York
Qualified in Monroe County
My Commission Expires 9-14-91

Note: Please send all subsequent tax documents to:

Jeff Dowell
472 Lakeshore Drive
Hilton NY 14468

193 - 0078

STATE OF OREGON)
COUNTY OF DESCHUTES) SS.

I, MARY SUE PENHOLLOW, COUNTY CLERK AND RECORDER OF CONVEYANCES, IN AND FOR SAID COUNTY, DO HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS RECORDED THIS DAY:

89 SEP 28 PM 2:32

MARY SUE PENHOLLOW
COUNTY CLERK

David Arntz
18350 Skyline View Rd
Bend, Or 97701

BY. D Rehberg DEPUTY

NO. 89-24952 FEE 25 —

DESCHUTES COUNTY OFFICIAL RECORDS

88

2/4/92 (1st of two cover letters/versions sent)

Frank Cibelli
1972 N.E. 3rd St.
Bend OR 97701

This letter from Dowell to Cibelli written on 4 Feb 1992 was before CDD's Paul Blikstad's letter to Jeff Dowell on 10 Feb 1992.
This shows that the Dowells knew about, and originally planned for their structure to be in front of the maximum building line as shown on the final partition plat map.

Dear Frank,

I had a long talk with Brian Harrington at the planning commission shortly after we spoke yesterday. He is the same contact that is currently processing/approving Thommy's application. We spoke at great length about how similar my application was going to be to Thommy's and he pointed out a couple of things that he wanted to see different on mine, and I've made note of them below.

I've also attached little yellow post-it notes to key areas of some of the documentation that I've enclosed. For your reference, I'll make mention of them in my dialog and call them out by number.

To take things from the beginning, on 12/31/91, I had my parents go down and pick up from Brian Harrington what he described as 'everything I needed' to submit my application. What I got was #1, #2, #3 & #4. In talking with Brian yesterday on the phone, he confirmed that the important elements of the application had been highlighted in yellow. I also made some notes on comments he made to me over the phone next to a few of the highlighted areas.

I have enclosed a separate document, "Supporting Documentation, which addresses all of these to what I hope will be Brian's and the Planning Boards satisfaction. You might want to run this document by him early on in the process, just in case there are any major changes that need to be made to it. As a matter of fact, you might want to take a look at it yourself and make sure I didn't put anything in there that would raise a flag or is better left unsaid. If you or Brian have suggested changes, just give me a call. I've got it all on the computer here so it's a snap to edit it as much as necessary.

I have also enclosed the copies of Bartons Site Map and responses to the "regulations," as well as an overall topographical map to the area. I assume you are already familiar with them as it's my understanding that you worked with he and JB very closely on his recent submission. These documents are labeled #5 & #6 respectively.

For your reference, and for submittal with the application, I draw your attention to the "Acreage Overview" and Appendix III & IV of the "Supporting Documentation." These give you a good idea of the location, type and shape of the house I have in mind.

Please give me a call after you get this information and have a chance to go over it. I need to know that I gave you everything that you/we need to get this application submitted, approved and on-file. Can you give me an idea as to how long you think it will take to the work you need to do, and of equal importance, when you'll have a chance to start working on it. My concern is obviously that it gets in ahead of the fast approaching zone change which started all this frenzied activity a little more than a month ago.

Thanks again for your assistance. I owe you one and will obviously pick up an out of pocket expenses you incur as well as pay you whatever you feel is fair for your time and efforts on my behalf.

Respectfully,

Jeff T Dowell
422 Lakeshore Drive
Hilton NY 14468
Day: 800 888 7860 EST
Eve: 716 392 7271 EST

The "Acreage Overview" map shows the proposed structure between the maximum building line and the road.

Mr. Dowell is feeling rushed because of the New WA 18.88 using 300 ft maximum building line will restrict where he can build even more than the static hard coded maximum building line on the final partition plat map. Also, F-3 18.44 goes away. Must use F-2 18.40.

Mr. Dowell is willing to pay Cibelli for his "time and efforts on my behalf", but refuses to compensate those who have tended to his half of the joint property since he bought in 1989.

This letter from Dowell to Cibelli written on 4 Feb 1992 was before CDD's Paul Blikstad's letter to Jeff Dowell on 10 Feb 1992.
This shows that the Dowells knew about, and originally planned for their structure to be in front of the maximum building line as shown on the final partition plat map.

2/7/92

(2nd of two cover letters/versions sent. This was approved by the planning board on 2/9/92. Done deal as I understand it. We're supposed to be getting written confirmation shortly and have one year to get building started)

Frank Cibelli
1972 N.E. 3rd St.
Bend OR 97701

Dear Frank,

I've made some additions to the parts of the application as we talked about this weekend. If there needs to be furthre elaboration, let me know and I'll add some more.

I'll be in Chicago the next 3 days so if you need to get a hold of me, leave word here at the office and I'll call you from there.

Thanks,

Respectfully,

Jeff T Dowell
422 Lakeshore Drive
Hilton NY 14468
Day: 800 888 7860 EST
Eve: 716 392 7271 EST

Supporting Documentation

Forest Use *18.44.010* *Purpose*

Understanding the purpose of F-3 Zoning, following paragraphs address the burden of proof required, as well as carefully outline the intent and level of awareness and sensitivity of the people who already live in the properties immediately adjacent to mine.

Perhaps the single most important point to bring to light in substantiating my case for allowing a house to put on this land is the fact that a precedent has already been set which deemed the properties immediately adjacent to this one, not suitable for forest use, and thus, not posing any threat or negative impact to the Purpose stated in 18.44.010. There is no irrigation or running water of any type in the area, thus no opportunity for crop or forest management and the soil content is predominantly sand and pumice dust, with a consistency barely sufficient to support patches of sage brush and a small number of juniper trees. The only way to get water is amounts sufficent for use is to drill a well, an even then, the amount available would support a single household. It would be nothing which could support forest or agriculture harvesting.

To further support the above statement, it should be noted that within the last 18 months, a new residence has been erected on the tax lot 200 (see enclosed map labeled "Acreage Overview") immediately adjacent to my lot, a conditional use permit application very similar to this one has been granted for a house to be constructed on tax lot 500, and there has been a residence on tax lot 400 for the last 10+ years.

Additionally, the following were conditions incorporated into a legally binding contract that I approved when I signed the purchase contract on this property:

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 that 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 the 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.

I can assure you that every precaution will be taken with respect to the actual building of the house and the required modifications to the area immediately surrounding the house.

Forest Use ***18.44.040*** ***Limitations on Conditional Uses***

As was detailed in 18.44.010, Purpose, above, this land has already been designated as not suitable for forest use, and as such, the conditions stated in 18.44.040, are all met as follows:

A. This use is consistent with existing farm and forest uses as set forth in the stated articles.
B. Establishment of this residence would in no way interfere with farm or forest use on adjacent lands because as noted above, none of the adjacent lands are suitable for such purposes, or are being used for such purposes.
C. This proposed use in no way alters the stability of the overall land use pattern of the area, and further, is very consistent with the immediately surrounding properties, as detailed in 18.44.010 above.
D. This property is not suitable for timber production since the soil is very rocky and sandy and is covered by sparse scrub juniper, not to mention tha fact that water is not present in sufficent amounts to support forest or agriculture management of any type. The precedent now in effect is that this area is generally known as being unsuitable for timber production and the production of farm crops and livestock, particularly when one considers the terrain, and adverse soil land and water conditions. The top soil is too thin are void of the necessary nutrients for good alfalfa or grass production or harvesting.

Forest Use ***18.44.050*** ***Limitations on Non-Forest Residential & Recreational Uses***

A. This use is consistent with these distance and proximity considerations and regulations.
B. This stipulation does not apply, as there are no such surrounding uses or areas.
C. This proposed use will in no way negatively impact the current public services, existing road systems or traffic demands and/or fire protection support mechanisms. All of these mechanisms are now in place for the existing residences in the area and will not be affected by the addition of one more house. Relating specifically to fire protection, a pond on tax lot 400 was recently used for helicopter water-refilling during the "delicious road" fire will always be accessible for public use

in fire emergency.

D. Nothing in my proposed use of the land will in any way tax or affect the capacity of the soil type, or in any significant way alter it from it's current state. My proposed building site, and for that matter, the majority of my lot, is rock base, with minimal soil of any type.

E. There is no forest production in the area. The nearest known forest production is at least 20 miles away.

F. My proposed home site is on a very gradual down slope, in an existing clearing, almost completely obscured from view on Sisemore Rd. With the possible exception of one or two 3-4 ft scrub junipers, no trees will be cut to accommodate my homesite or driveway.

G. This proposal is consistent with the Comprehensive Plan.

H. A well will be dug similarly to those on tax lot 200 and 400 and it is assumed that it will produce the necessary quantity and quality of water to support my residence. The sanitary disposal systems and solid waste disposal will be handled by leech fields extending westward away from the proposed building site, all in accordance with established code.

I. The house site is situated so as to maximize the exposure to the southern sun during the winter. The existing house plans also call for a passive solar design, with the potential addition of active solar cells in the near future, particularly as the costs associated with such alternative energy sources continue to drop.

J. Refer to "C" above

K. The effects on natural resources, habitats and wildlife will be minimized. As mentioned earlier, the entire 'community' has been developed with the utmost emphasis on the existing natural habitat and the conditions outlined in the purchase contract for the property further assure that such will always be a top priority. This proposed house site will be very difficult to see from the road or the immediately surrounding area, as it sits at the base of a long gradual slope with trees and brush surrounding the clearing. The pond on lot 400 also serves to draw in and support a wide variety of wild-life which might not otherwise be present in such density in this area.

L. J. Refer to "C" above

Forest Use ***18.44.060*** ***Dimensional Standards***

A. Please refer to the attached "Acreage Overview" for the approximate location and size of the lot. The overall lot itself is 40 acres in size, but it divided into three distinct parcels. The first is a parcel of approximately 3.4 acres owned by Bill and Leigh Kuhn (Map and Tax Lot # 16 11 19 00 00200). The second is a parcel of the same approximate 3.4 acres, owned by me (Lot 100). The remaining parcel, lot 300 is one which is shared in ownership by the two of us and is approximately

33.2 acres in size. This joint property is to be 'forever wild' and cannot, by contractual agreement, be built upon or altered in any way. Such was done to ensure a sufficient buffer zone to maintain the natural state of the habitats of the surrounding area.

Wildlife Area Combining Zone 18.88.060 Dimensional Stds.

A. Please refer to Forest Use, 18.44.060, Dimensional Standards, "A" above.

Respectfully submitted,

Jeff T Dowell
422 Lakeshore Drive
Hilton NY 14468

Day: 716 247 7860
Eve: 716 392 7271

R.11E.W.M.

COUNTY

N

W E

S

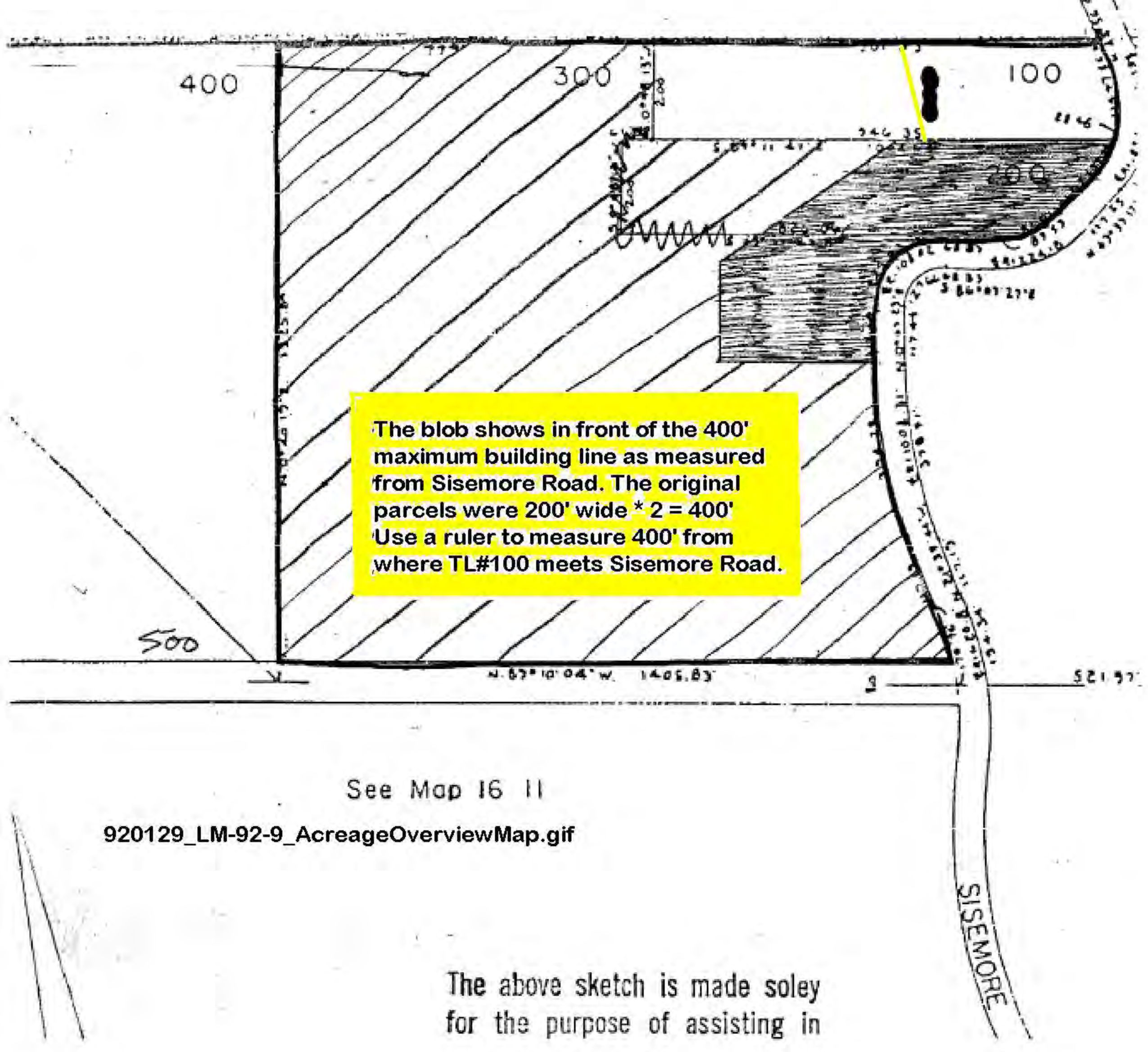
"ACREAGE OVERVIEW"

3.4 acres (approx) owned by me (Jeff Dowell)

Shared ownership of 39.2 acres (approx)

3.4 (approx) owned by Bill & Leigh Kuhn

See Map 16 11



The blob shows in front of the 400' maximum building line as measured from Sisemore Road. The original parcels were 200' wide * 2 = 400' Use a ruler to measure 400' from where TL#100 meets Sisemore Road.

See Map 16 11

920129_LM-92-9_AcreageOverviewMap.gif

The above sketch is made soley for the purpose of assisting in

920129_LM-92-9_ProposedFloorPlan-2.gif

920129_LM-92-9_ProposedFloorPlan-2.gif

Appendix IV

Proposed Home - Ground Level View

eltec 800-C

ry foyer
o Deltec units
ue design of the
design features
in kitchen and a
g-dining area as
pacious family
placement of the
foyer allows for

itchen and a
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ous family
ement of the
er allows for
from a
djacent

(Each)

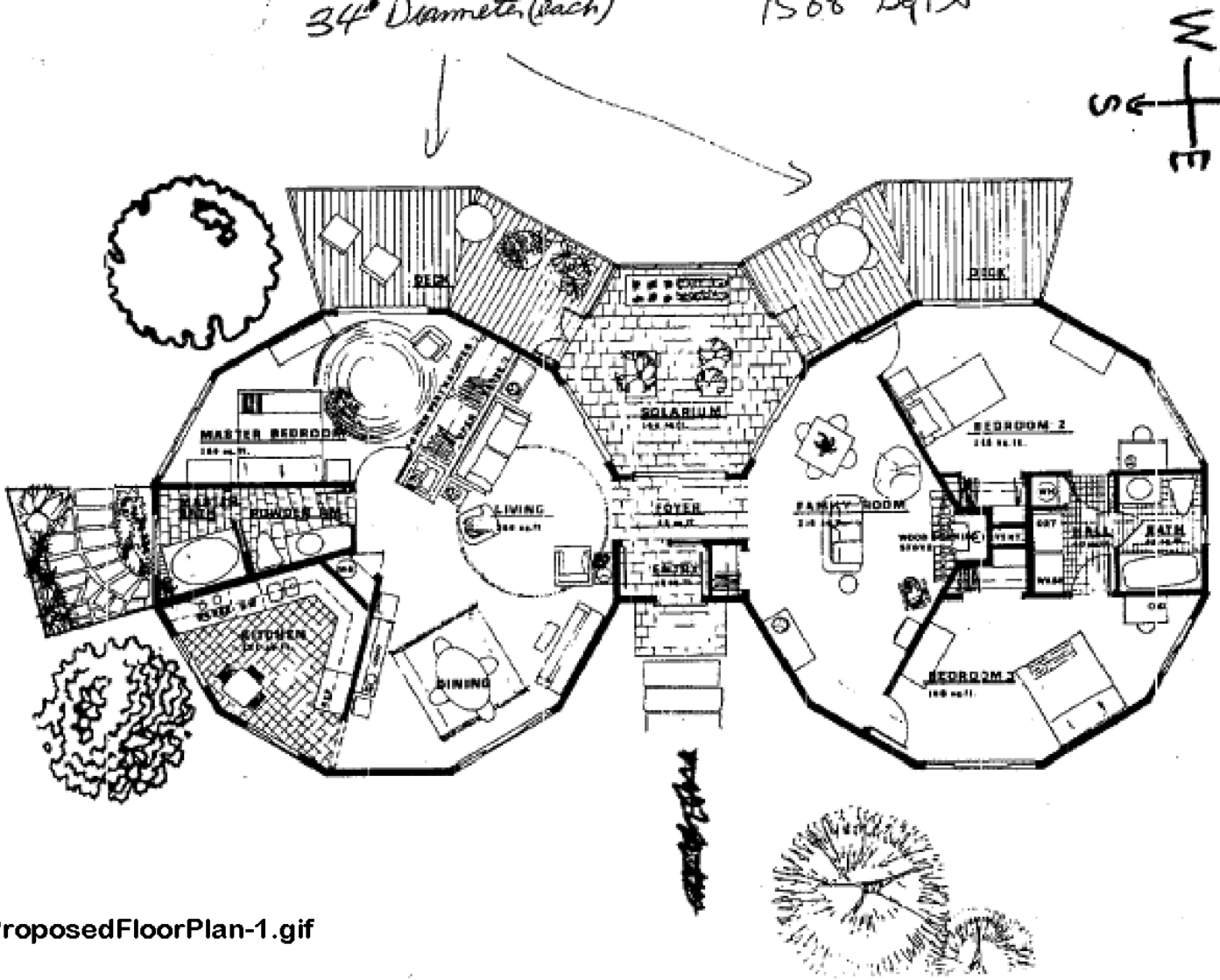
a

Appendix III

920129_LM-92-9_ProposedFloorPlan-1.gif

Proposed House Lay Out - Floor Plan

34' Diameter (each) 1568 Sq Ft



920129_LM-92-9_ProposedFloorPlan-1.gif

920129_LM-92-9_ProposedFloorPlan-1.gif

On Dowell Property - Pile of illegally dumped Fill between 438 & 529 feet back from Sisemore Road .pdf

this pile must be removed

Peter Gutowsky

From: William Kuhn <William@RiskFactor.com>
Sent: Wednesday, January 27, 2016 4:44 PM
To: Peter Gutowsky
Subject: Kuhn Docs 2
Attachments: LL8721 Map After LL Adjustment with measurments and Building Envelope color.jpg; pp00 19760208_neighbors2DesCo 4 pages.pdf; pp01 19790323_MP-79-69 _Map2Parcels.pdf; pp02 19791210_MP-79-232_Map2Parcels.pdf; pp03 19791224 _MP-79-232_ODFW-Opposes.pdf; pp04 19800206n_MP-79-232_CDD-Denial3.pdf; pp05 19800218_CU-80-22_Application By JEBarton.pdf; pp06 19801112_PlatMap_ 400setback.pdf; pp07 198704 CDD says there is a problem Building Envelope in Green.pdf; pp08 LL8721 Map 1 Adjustment series.pdf; pp09 LL8721 Map 2 Adjustment series Proposal to Burchett.pdf; pp10 LL8721 Map 2 Adjustment series Proposal to Burchett.pdf; pp11 LL8721 Map After LL Adjustment with measurments and Building Envelope color.pdf; pp12 LL8721 Map After LL Adjustment with measurments and Building Envelope color w houset.pdf; pp13 19890126 Kuhn Plot Plan Site Map shows 100 setback.pdf; pp14 19890126 Kuhn Plot Plan Si.pdf; pp14 19890126 Kuhn Plot Plan Site Map shows 100 setback.jpg

lot line adjustment docs
pp00 through pp14

--
William Kuhn
INVEST/O - Registered Investment Advisors PO Box 5996 Bend, OR 97708-5996
541 389 3676
William@RiskFactor.com

"Illegitimi non carborundum" - refers to the continuing acts of Deschutes County

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

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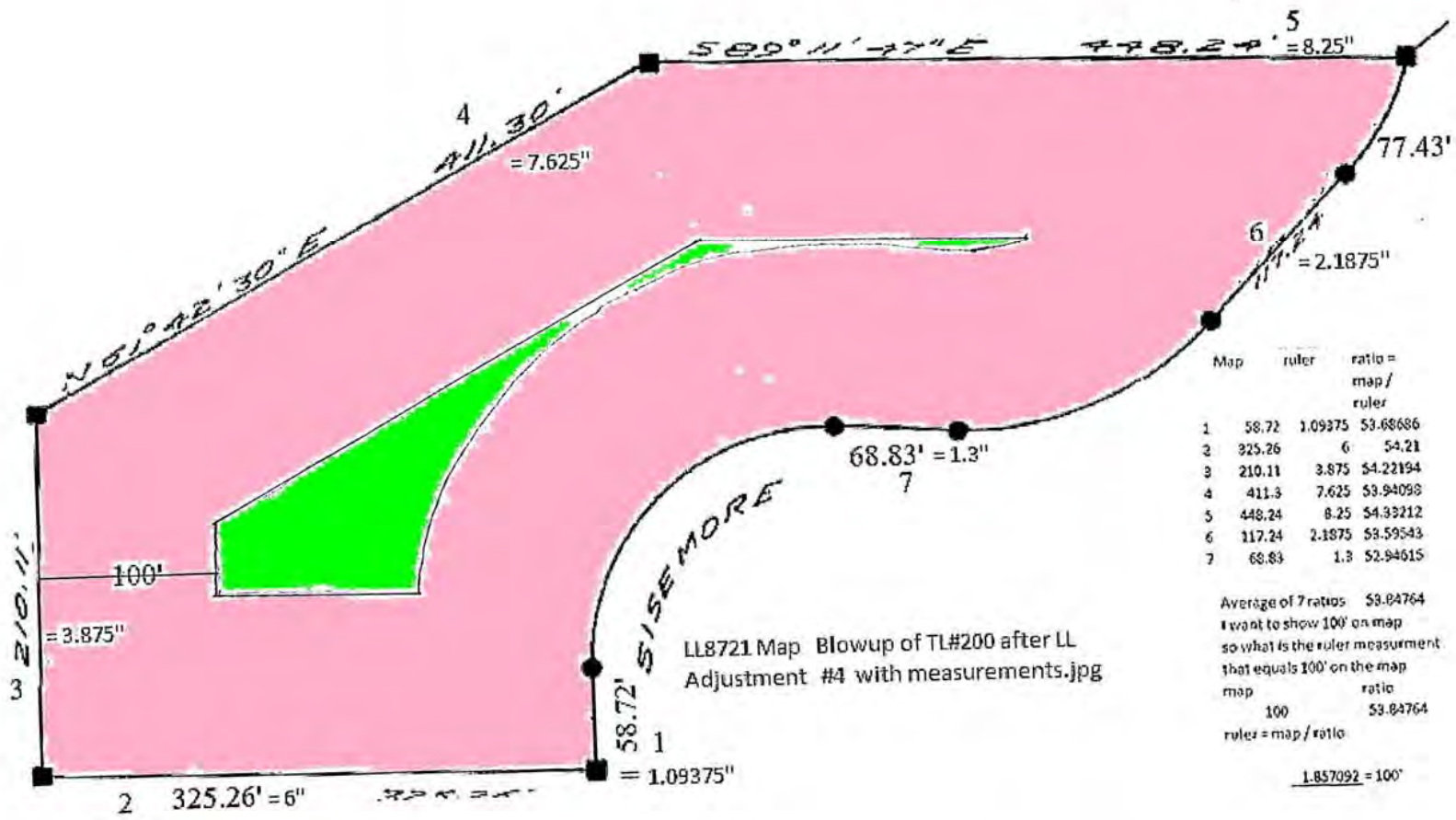


	Map	ruler	ratio = map / ruler
1	58.72	1.09375	53.68686
2	325.26	6	54.21
3	210.11	3.875	$4.22194
4	411.3	7.625	$3.94098
5	448.24	8.25	$4.33212
6	117.24	2.1875	$3.59543
7	68.83	1.3	52.94615

Average of 7 ratios 53.84764

I want to show 100' on map
so what is the ruler measurment
that equals 100' on the map

map	ratio
100	53.84764

ruler = map / ratio

1.857092 = 100'

Buildable a.k.a. Building Envelope

NON-BUILDABLE Forest Zone 100' minimum Side Yard Setback

Tumalo Winter Range

Febuary 8, 1976

We the undersigned independent individuals are in agreement and do endorse the following thoughts concerning land parcels #14, #11, # 9, #17 (located on the east boundary of the Tumalo Winter Deer Range), which we acquired from the county at the land auction held Febuary 6, 1976 at the County Court House:

We shall respect as paramount the intention for which the Winter Range Area was designed and the rights of the animals therein to remain undisturbed.

Specifically,

A.) the further acquisition of dogs or similar pets by any one of us will not take place, and those which are presently household pets and are likely to be introduced on to one or more of the parcels aforementioned will be restrained from harassing the wildlife in the area in any way.

We are seriously and conscientiously concerned about the welfare of the wildlife's sanctuary in jeopardy, and this policy of dog control is an example of self-imposed restrictions and personal responsibility we are willing to assume.

B.) at no time will any of us use "off-the-road" or "recreational vehicles" such as motorcycles, four-wheel drives, or snowmobiles in this area. We shall absolutly respect the Winter Range road closures.

C.) we feel we are located stratigically in order to insure the sanctuary of the wildlife in the Tumalo Deer Range from harassment by those who disregard its road closures and boundaries by trespassing in vehicles.

Often as not, when visiting one or more of the parcels in question we have observed in person blatant trespassing on to the Winter Range. It is obvious to anyone wishing to blaze down the network of back roads in the area that there is little chance they will be apprehended for breaking the law in this respect due to the difficulty of official policing of the vast Winter Range. But, with our presence a great deal of this abuse will be observed and effectively reported, hopefully curtailing this sort of thing. Thus, our presence at the boundary of the Winter Range might in fact <u>further</u> the welfare of the wildlife and the purpose of the winter sanctuary and aid the efforts of both government and private conservationists. Perhaps we also could aid in any monitoring of the wildlife in terms of numbers, etc., by keeping careful logs.

We seek without reservation the advice and council of ecologists and conservationist concerning the welfare of the animals on the Tumalo Winter Range and the bearing our presence might have on them. It is possible, we feel, to so order ones habitat in such a manner that it will harmonize, not further jeopardize or intensify the pressure on the wildlife in Oregon.

We have absolutely no intention of "sub-dividing" these parcels.

We are,

Parcel #14

David J. Seelye
Greg Steckler
Sharon M. Steckler

David J. Seelye
Greg Steckler
Sharon Steckler
1948 N.W. West Hill
Bend, Ore. 97701

s

Parcel #11

G.B. Eddy
James Eddy

1145 Cumberland
Bend, Ore 97701
6950 Oak Creek Dr.
Corvallis, Ore.

Parcel #9

John E. Barton

John E. Barton
Star Route, Box 41
Cloverdale, Ore. 97113

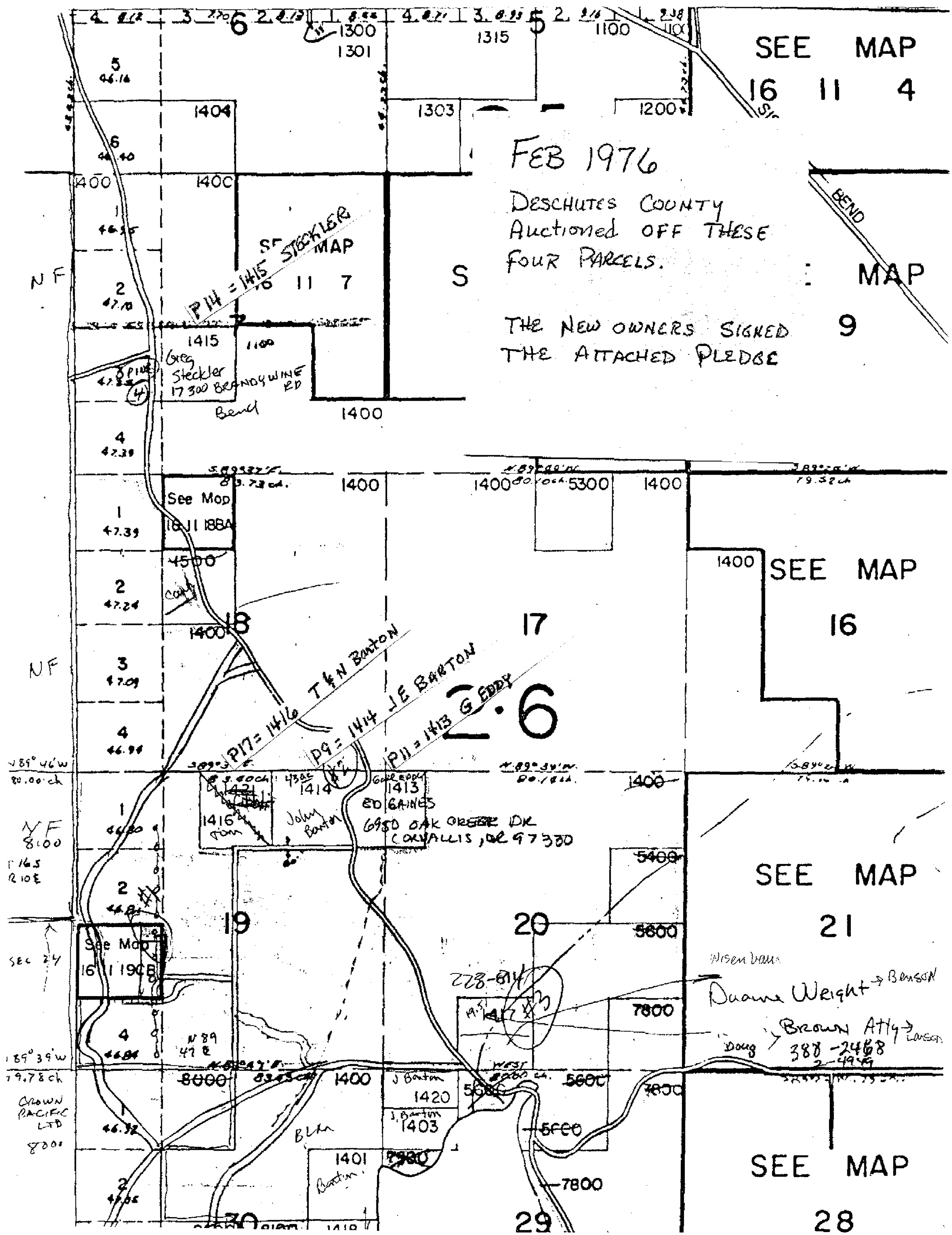
Parcel #17

Thompson J. Barton
Nanette I. Barton

595-6307

Thompson J. Barton
Nanette I. Barton
PO Box 623
Camp Sherman, Ore. 97730

Parcel #18


FEB 1976
DESCHUTES COUNTY
Auctioned OFF THESE
FOUR PARCELS.
THE NEW OWNERS SIGNED
THE ATTACHED PLEDGE
SEE MAP
16 11 4
SEE MAP
16 11 7
P14 = 1415 STECKLER
1415
Greg Steckler
17300 BRANDYWINE RD
Bend
1400
SEE MAP
16
P17 = 1416 T & N Barton
P9 = 1414 J E BARTON
P11 = 1413 G EDDY
1416 Tom
1414 John Barton
1413 ED GAINES
6950 OAK CREEK DR
CORVALLIS, OR 97330
SEE MAP
21
SEE MAP
28
18
17
19
20
29
30
Duane Weight → Benson
Brown Atty → Larson
388-2468
Crown Pacific LTD
NF
BEND

TWP. S.	RGE. E.	SEC.	1/4	1/16	TAX LOT NUMBER	TYPE REAL PROP.	SPEC. INT. IN	CODE AREA NUMBER
16	11				1400			

MAP NUMBER — ACCOUNT NUMBER

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTY
2-6 & 6-12 & 6-13 & 6-18 DESCHUTES COUNTY ASSESSOR'S OFFICE

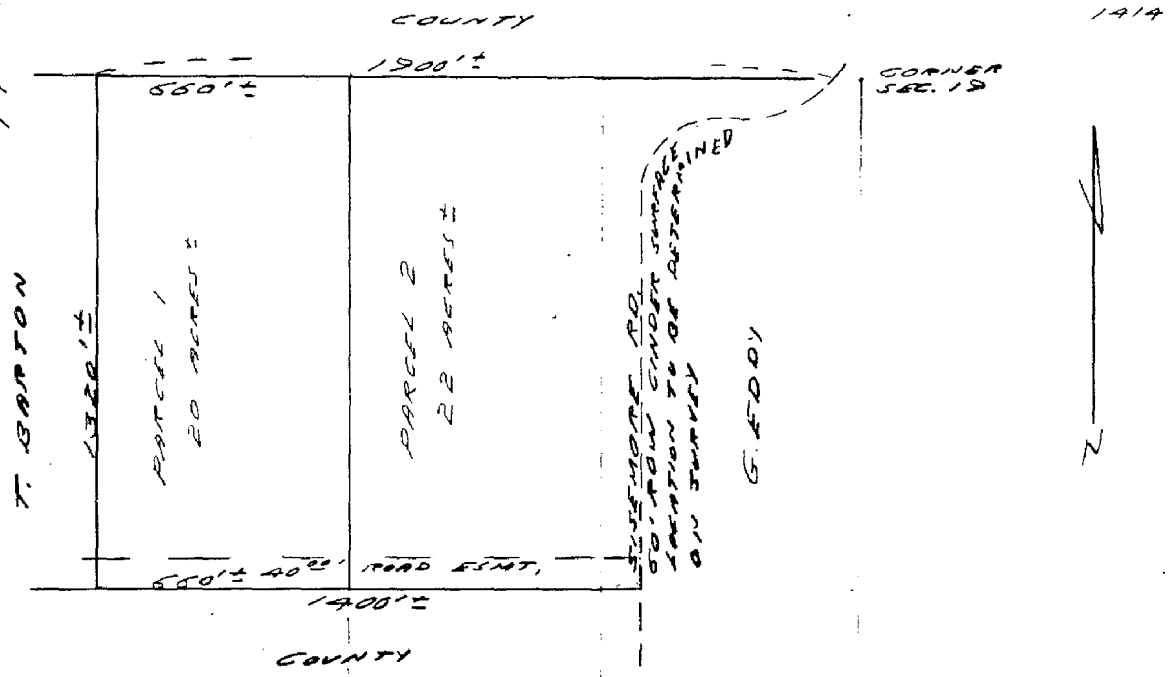
SECTION — TOWNSHIP S. — RANGE E.

LOT NO. — BLOCK NO. — ADDITION — CITY

INDENT EACH NEW COURSE TO THIS POINT	ADDITIONAL DESCRIPTION AND RECORD OF CHANGE	FORMERLY PART OF T. L. NO.		DATE OF ENTRY ON THIS CARD	DEED RECORD VOL.	DEED RECORD PG.	ACRES REMAINING
	Sec. 6 Lot 6, $SE\frac{1}{4}SW\frac{1}{4}$		86.40				
	7 $1,2,3,4$, $E\frac{1}{2}NW\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}$, $SE\frac{1}{4}SE\frac{1}{4}$		468.69				
	8 $S\frac{1}{2}SW\frac{1}{4}$		80.00				
	16 $SW\frac{1}{4}NW\frac{1}{4}$, $W\frac{1}{2}SW\frac{1}{4}$, $SE\frac{1}{4}SW\frac{1}{4}$		160.00				
	17 $E\frac{1}{2}NE\frac{1}{4}$, $SW\frac{1}{4}NE\frac{1}{4}$, $W\frac{1}{2}$, $SE\frac{1}{4}$		600.00				
	18 $1,2,3,4$, $NE\frac{1}{4}NW\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}$, $E\frac{1}{2}$		628.66				
	19 All		667.28				
	20 $NE\frac{1}{4}NE\frac{1}{4}$, $W\frac{1}{2}NE\frac{1}{4}$, $W\frac{1}{2}$		440.00				
	29 $NW\frac{1}{4}NW\frac{1}{4}$		40.00				
	30 $NE\frac{1}{4}$, $SE\frac{1}{4}NW\frac{1}{4}$, $NE\frac{1}{4}SE\frac{1}{4}$		240.00		44 47 50 54 122	192 498 606 336 564	3411.03
	Less T.L. 1401 80.00 ac						3331.03
	Less T.L. 1402 46.83 ac						3284.20
	Less T.L. 1403 40.00 ac						3244.20
	Less T.L. 1404 66.64 ac			7/5/61			3177.56
			R.C.	6/7/66	66	203	
	Less T.L. 1405 40.0 ac		deed	2/11/69	163	151	3137.56
		11.17 ac	Patent	12/10/70	173	395	3126.39
	Less pt dedicated for rd.	~~8.36 ac~~	Deed	2-27-76	228	245	~~3129.20~~
	Less T.L. 1413	38.0 ac	Cont.	3-11-76	228	742	3088.39
	Less T.L. 1414 JEB	40.72 ac	Cont.	3-11-76	228	796	3047.67
	Less T.L. 1415	45.0 ac	Cont.	3-11-76	228	802	3002.67
	Less T.L. 1416	39.36 ac	Cont.	3-11-76	228	808	2963.31
	Less T.L. 1417	39.0 ac	Cont.	3-11-76	228	814	2924.31

OVER

79-69



VOID

MINOR LAND PARTITION

MP- 79 - 69 DATE 3-23-79

TWSHP 16 S RNGE 11 E SEC 12 TL ____

DEED OWNER JOHN BARTON
17871 SNOW SHOW RD.
BEND ORE. 97701

PARTITIONER SAME

SURVEYOR EGGLIN & HOCKNING
ENGINEER 942 NW KIHL, BEND

SEWAGE DISPOSAL SYSTEM
- [x] SEPTIC TANK
- [ ] CITY SEWER
- [ ] COMMUNITY SEWER

ZONE A-1

WATER SOURCE
- [x] WELL
- [ ] CISTERN
- [ ] COMMUNITY WATER
- [ ] P.U.W. SYSTEM

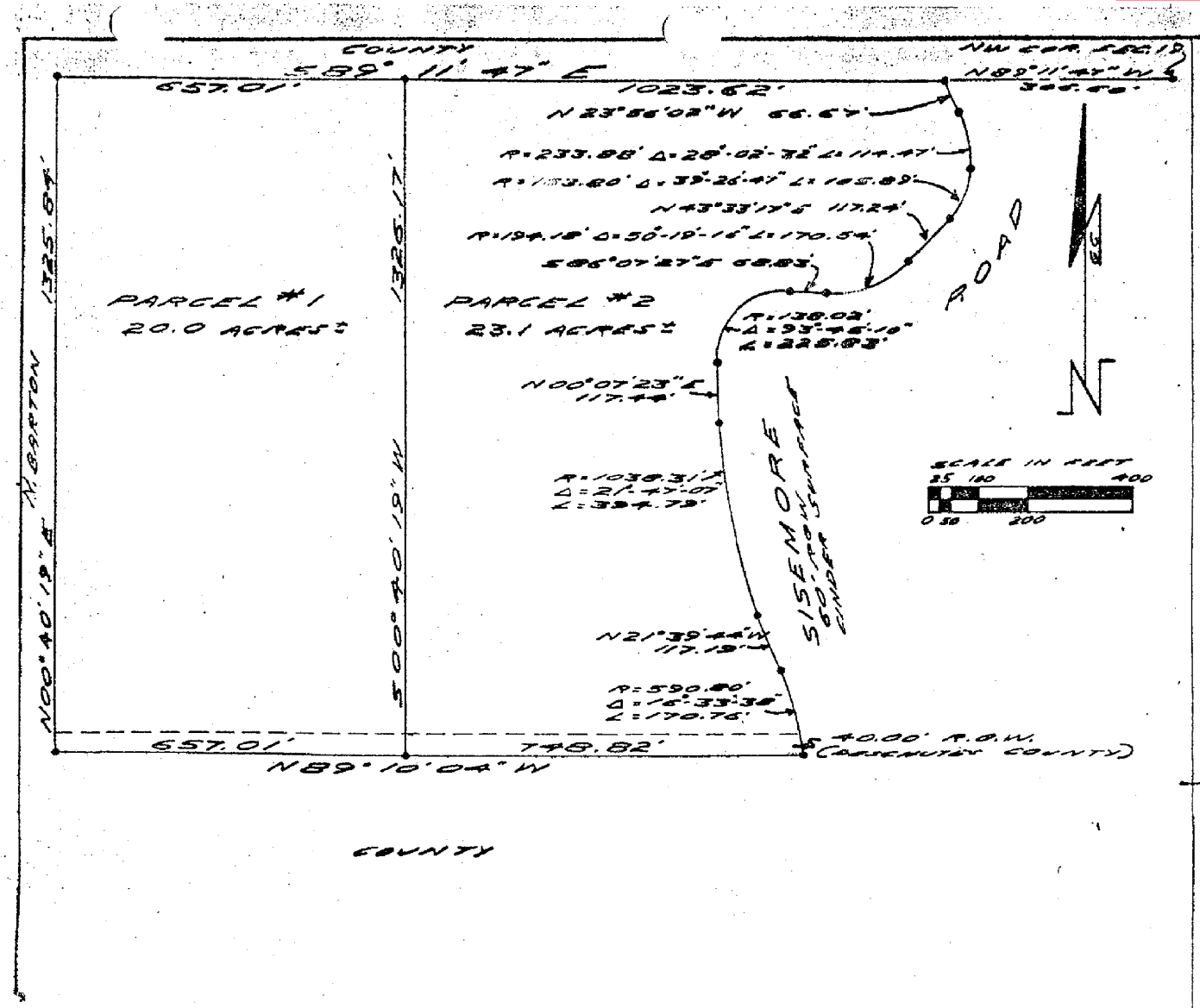
DESCHUTES COUNTY
PLANNING DEPARTMENT

APPROVALS:

COUNTY COMMISSIONER	DATE
COUNTY COMMISSIONER	DATE
COUNTY COMMISSIONER	DATE
COUNTY PLANNING DIRECTOR	DATE
COUNTY SANITARIAN	DATE

46-79

pp02 19791210_MP-79-232_Map2Parcels.pdf



MINOR LAND PARTITION

MP- 79 - 232 DATE 12-10-7.

TWSHP 16 S RNGE 12 E SEC 28 TL 16-1 14-12

DEED OWNER DESCHUTES COUNTY

PARTITIONER JOHN BARTON
17871 SNOW CR. RD.
BEND, ORE.

SURVEYOR EDWIN E. HOSKINS
ENGINEER 942 N.W. HILL, BEND

SEWAGE DISPOSAL SYSTEM
- [x] SEPTIC TANK
- [ ] CITY SEWER
- [ ] COMMUNITY SEWER

ZONE F-3

WATER SOURCE
- [x] WELL
- [x] CISTERN
- [ ] COMMUNITY WATER
- [ ] P.U.W. SYSTEM

or

012167

79-232

DESCHUTES COUNTY
PLANNING DEPARTMENT

APPROVALS:

COUNTY COMMISSIONER	DATE
COUNTY COMMISSIONER	DATE
COUNTY COMMISSIONER	DATE
COUNTY PLANNING DIRECTOR	DATE
COUNTY SANITARIAN	DATE

79-232

RECEIVED
DEC 26 1979
PLANNING DEPT.

pp03 19791224_MP-79-232_ODFW-Opposes.pdf

VICTOR ATIYEH
GOVERNOR

Department of Fish and Wildlife

REGION 3—CENTRAL OREGON
61374 PARRELL ROAD, BEND, OREGON 97701 PHONE 382-5113

December 24, 1979

Deschutes County Planning Dept.
Deschutes County Courthouse Annex
Bend, OR 97701

Re: Barton Minor Land Partition
79-232

The Deschutes County Comprehensive Plan identifies the location of this proposed action as being within the Tumalo Winter Range. The combining zone stipulates 40 acre minimum lot sizes to protect mule deer and mule deer habitat.

A primary consideration on deer winter range is dwelling density because of the attendant harrassment problems, including vehicles and dogs. During winter stress periods a minimal amount of harrassment to weakened animals can result in reduced over-winter survival.

To help protect wintering deer on the Tumalo Winter Range the Dept. of Fish and Wildlife has cooperative agreements with landowners to control vehicular traffic from December 1 to March 30. This proposed action is within the road closure boundary as shown by the enclosed map.

It can be argued that a minor partition such as this will result in only one additional dwelling. This is true, but the potential exists for partitioning of lots in the winter range that could double the number of dwellings in the future if this becomes an allowed practice.

Because the County has recognized the Tumalo Winter Range as sensitive wildlife habitat and formulated zoning ordinances to protect its integrity and because of the management practices instituted by the Dept. of Fish and Wildlife to protect this deer herd, we oppose the approval of this partition.

Sincerely,

Mike Golden
Assistant Regional Supervisor

MPG:ah
Enc. 1
cc: Behrens

791224.1

79-2

Deschutes County Planning Department

COURTHOUSE ANNEX, ROOM 102 • PHONE 382-4000, EXT. 207 & 208
BEND, OREGON 97701

THIS IS THE THIRD DENIAL BY CDD TO DIVIDE PROPERTY INTO TWO PARCELS

1ST ATTEMPT 19790323 MP-79-69 - DENIAL LETTER WAS DATED 19790509

2nd ATTEMPT 19791210 MP-79-232 - DENIAL LETTER WAS DATED 19791228

pp00 19760208_neighbors2DesCo
4 pages.pdf

February 6, 1980

Mr. John Barton
17671 Snow Creek Road
Bend, Oregon 97701

Re: MP-79-232

Dear Mr. Barton:

I have reviewed your original application submitted for partition of your property and have determined that the Planning Department cannot continue a review under the County's old zoning regulations.

In reviewing both Gil Eddy and your applications, it was found that you were both afforded the same opportunity in seeking approval for each partition application. Gil Eddy did file an appeal on his initial rejection and subsequently gained approval. Apparently you chose not to appeal and thereby forfeited further consideration of that particular application.

Your new partition request, MP-79-232, may be a viable application with a couple of alterations for your desire for the property. However, in order for the County to approve more than one single family dwelling to be developed on the property in the Tumalo Winter Deer Range, a conditional use application for a cluster or planned development must be applied for. Approval of this application will allow you to construct two dwellings on the 40 acre parcel, however, the property will have to be held in common ownership. If a Planned Development is approved, a small piece of property with each dwelling, such as one or two acres, may be sold individually, but the remainder must be retained in common ownership among the two dwelling owners. Your deed restrictions may also be recorded with the property, along with any other requirements as may be found necessary by the Hearings Officer and Fish and Wildlife Department. Enclosed is the conditional use application and accompanying documents.

Should you have further questions, please contact me at this department.

DESCHUTES COUNTY PLANNING DEPARTMENT
John E. Andersen, Interim Planning Director

Philip E. Paschke, Assistant Planner
PEP:jr
cc/file
Colvin & Hoerning

Encl.

1980 02 06.3

pp05 19800218_CU-80-22_Application By JEBarton.pdf

DESCHUTES COUNTY

FEE: $174.00 CONDITIONAL USE PERMIT APPLICATION

PLEASE PRINT

****

APPLICANT'S NAME John Barton

ADDRESS 17671 Snow Creek Road, Bend ZIP CODE 97701 PHONE 388-1854

LOT OWNER'S NAME (if different) —

ADDRESS — ZIP CODE — PHONE —

PROPERTY DESCRIPTION: T 16 R 11 S 19 TAX LOT 1414

GENERAL LOCATION (closest intersections, etc.) adjacent to Sisemore Rd one mile north of Old Tumalo Dam

PRESENT USE OF PROPERTY (Description, incluidng any existing structures and their current use)

unoccupied - part of county grazing lease - no structures - sage flats

PROPOSED USE: (explain all proposed uses in detail) two dwellings as residences only with considerable developement/life-stye restrictions. See my file in planning office.

PRESENT ZONE: F-3 (WA) TOTAL AREA OF PROPERTY: 43 acres

Attach a statement explaining evidence you plan to present to the Hearings Officer to enable him to make a decision. (SEE ATTACHED) *
No application will be accepted without a detailed preliminary site plan drawn to scale. I understand that any false statements made on this application may cause subsequent approval by the Hearings Officer to be NULL AND VOID.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED!

DATE: Feb. 18-80 APPLICANT: John Barton
signature

AGENT: _____
signature

I am the (circle one): (Owner) / Owner's Authorized Representative
(If authorized representative, attach letter signed by owner)

****

OFFICE USE ONLY

Date Filed: 2-21-80 Received By CAS

Fee Paid: $174.00 FILE NO.: CU-80-22

Receipt No: 18004 Hearing Date: _____

NOTES: _____

800218

Application Pg 1 of 4

File No. CU-80-22 Exhibit No. 2

Submitted By J. Barton

To: Deschutes County Planning Dept.

From: John Barton
17671 Snow Creek Rd.
Bend, 97701 388 1854

Concerning: Cluster Development on T16 R11 S19 TL# 1414

To a great extent the zoning / developments restrictions for this area have been adopted in accordance with studies / recommendations by the Fish and Wildlife Dept.

I therefore submit this cluster development proposal after having spoken a number of times with Mike Golden of the Fish and Wildlife Dept. This proposal incorporates all his suggestions for residences within the Tumalo Winter Deer Range.

The 43 acres will be broken down into 34.4 acres (80%) which shall be "open space" held in common ownership, and the remaining 20% will be divided into two parcels, 4.3 acres each.

The "open space" that is held in common ownership my not be used for the location of a private residence. However, it may be developed into irrigated or non-irrigated pasture land and my contain such farm buildings (barns, stables, greenhouses) as would be considered consistent with agricultural use. [illegible]

The "open space" common land may not be used for such joint adventures as a "dirt bike track" or any such activity as would be deemed detrimental to assuring wildlife objectives within the deer range.

A document stating these requirements/restrictions on the common property would be apart of both the land sale contracts involving the 4.3 acre parcels. This part of the sale contract will assure the maintenance of the common property in accordance with the interests of the Fish and Wildlife Dept.

The two 4.3 acre parcels are located immediately adjacent to the 3 parcels of 611 Eddies, the boardering property to the East (see maps enclosed). Thus the two clusterings are maintained next to each other. The two home sites on the 4.3 acre parcels must be kept within 400 ft. of Sisemore Road. This restriction assures the plot plan will be affective in maintaining the desired cluster effect. (See the layout plan for the 43 acre property.)

As part of this portfolio you will find letters of support from owners of all boarding properties and a comment from the Fish and Wildlife Dept.

Also note the enclosed sheet of restrictions that will be apart of the land sale contract for each of the 4.3 acre parcels.

800218
Application Pg3 of 4

Thank You For Your Consideration

* — RESTRICTIONS ON LAND USE TO BE APART OF LAND SALE CONTRACT —

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 elec. 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.

6. This contract carries with it the strongest encouragement to demonstrate sensitivity to living within the boundarys of the Tumalo Winter Deer Range, and urges the owners to adjust their live style accordingly.

John Barton

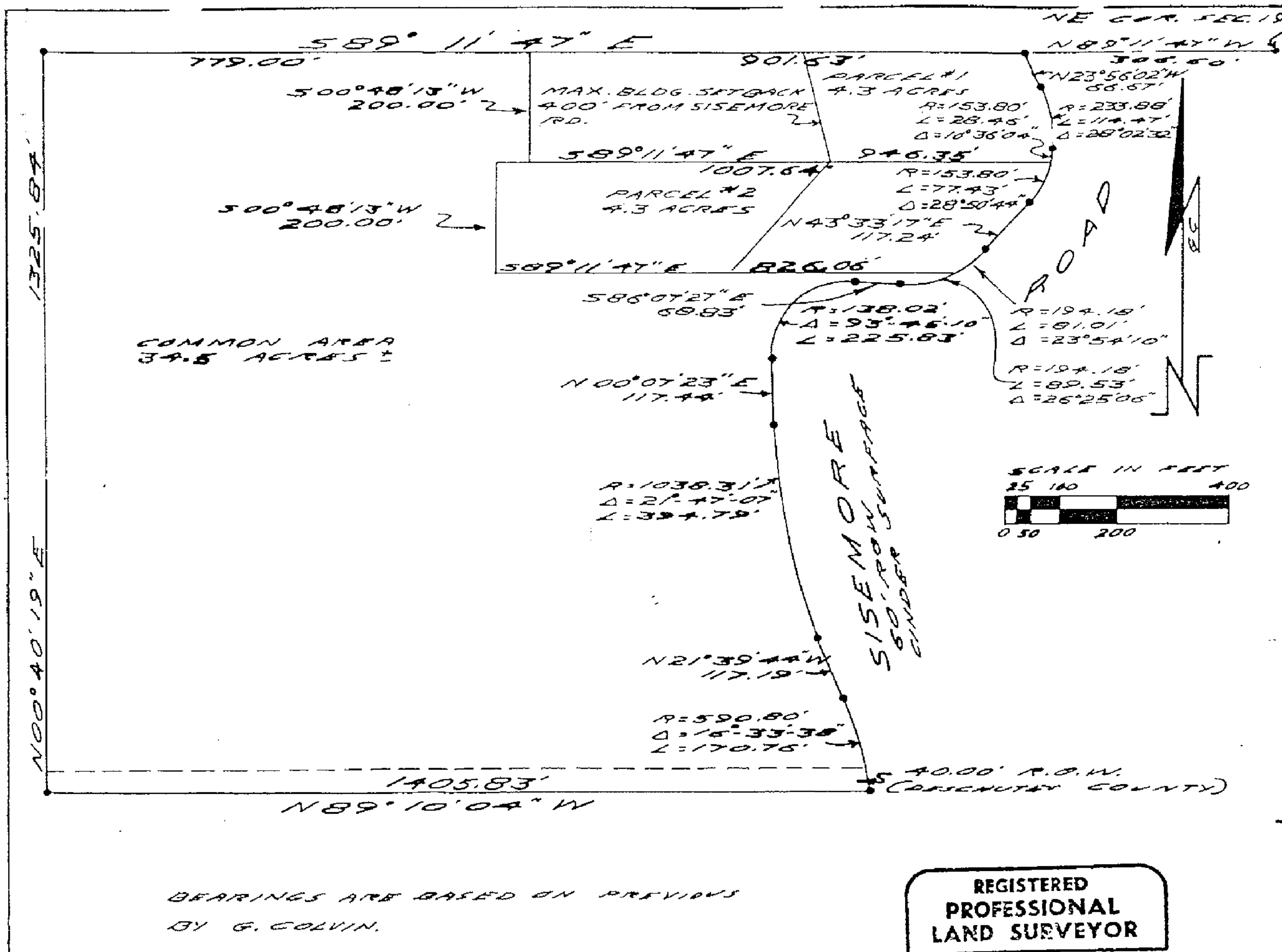
Feb-19-1980

800218
Application Pg 4 of 4

16-11-19 TL 1414

John Barton

pp06 19801112_PlatMap_400setback.pdf



REGISTERED PROFESSIONAL LAND SURVEYOR

George Colvin (signature)

OREGON
FEBRUARY 1?, 1975
GEORGE W. COLVIN, JR.
1020

MINOR LAND PARTITION

MP- *79* - *232* DATE *12-10-79*

TWSHP *16 S* RNGE *11 E* SEC *19* TL *16-11 1414*

DEED OWNER *DESCHUTES COUNTY*

PARTITIONER *JOHN BARTON*
17671 SNOW CR. RD.
BEND, ORE.

SURVEYOR *COLVIN & HOERNING*
ENGINEER *942 N.W. HILL, BEND*

SEWAGE DISPOSAL SYSTEM

- [x] SEPTIC TANK
- [ ] CITY SEWER
- [ ] COMMUNITY SEWER

ZONE *F-3*

WATER SOURCE

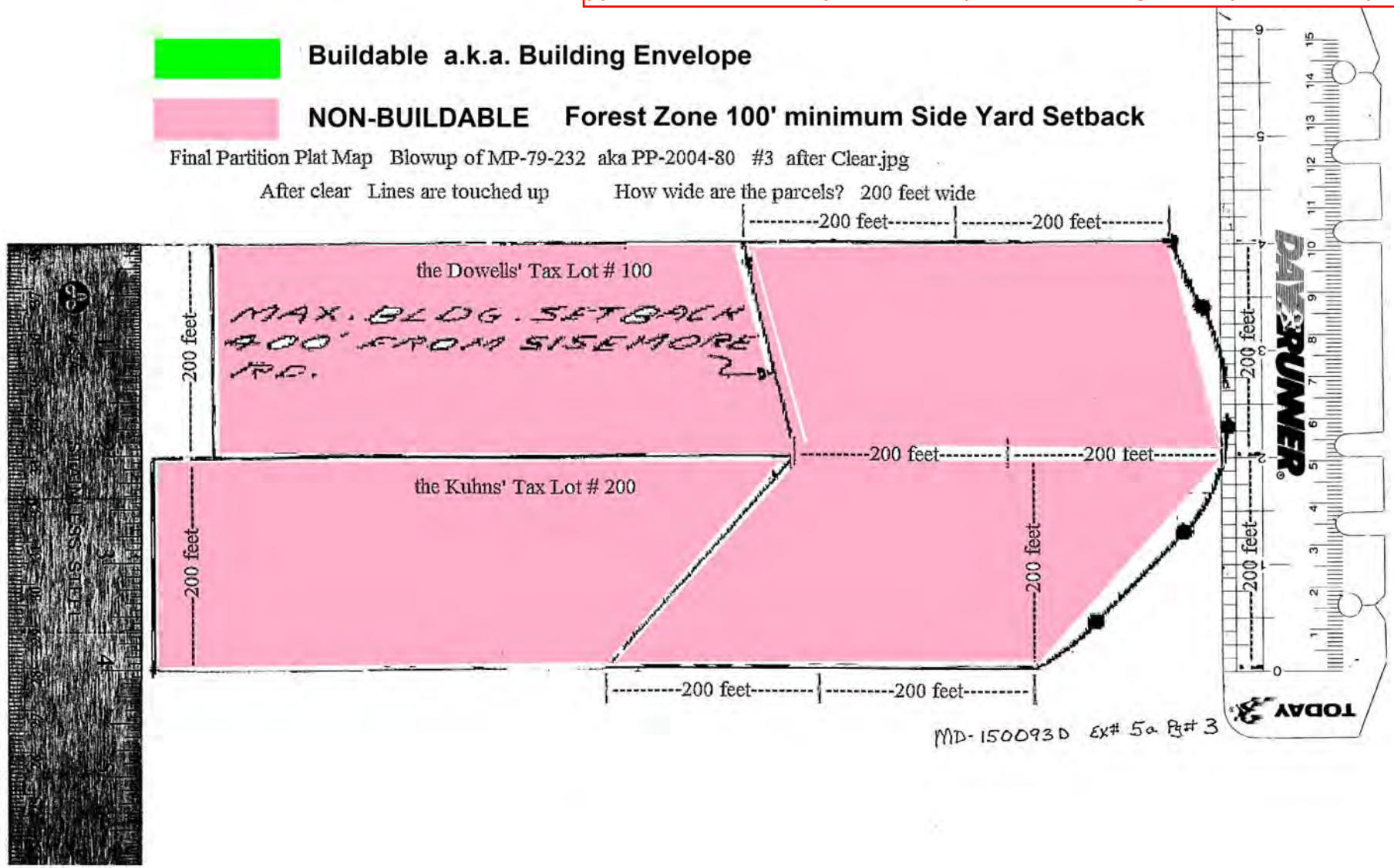
- [x] WELL
- *or* [x] CISTERN
- [ ] COMMUNITY WATER
- [ ] P.U.W. SYSTEM

DESCHUTES COUNTY
PLANNING DEPARTMENT

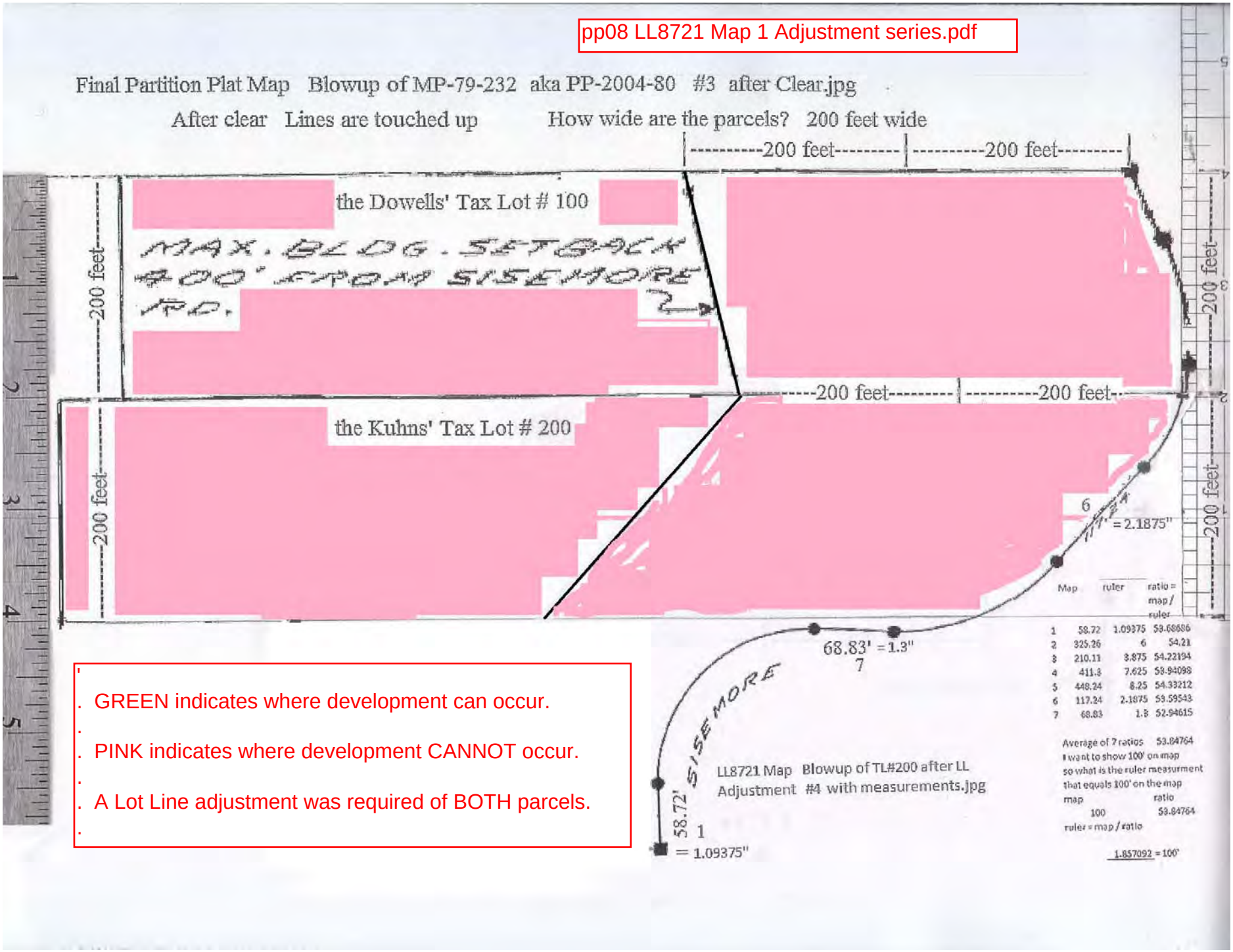
APPROVALS:

Edgar W. Graves COUNTY SURVEYOR	*10/2/80* DATE
Albert A. Young COUNTY COMMISSIONER	*11-12-80* DATE
Robert C. Paulson COUNTY COMMISSIONER	*11-12-80* DATE
Clay E. Shepard COUNTY COMMISSIONER	*11/12/80* DATE
John E. Andersen COUNTY PLANNING DIRECTOR	*11-12-80* DATE
John K. Glover COUNTY SANITARIAN	*11-12-80* DATE

pp07 198704 CDD says there is a problem Building Envelope in Green.pdf



pp08 LL8721 Map 1 Adjustment series.pdf

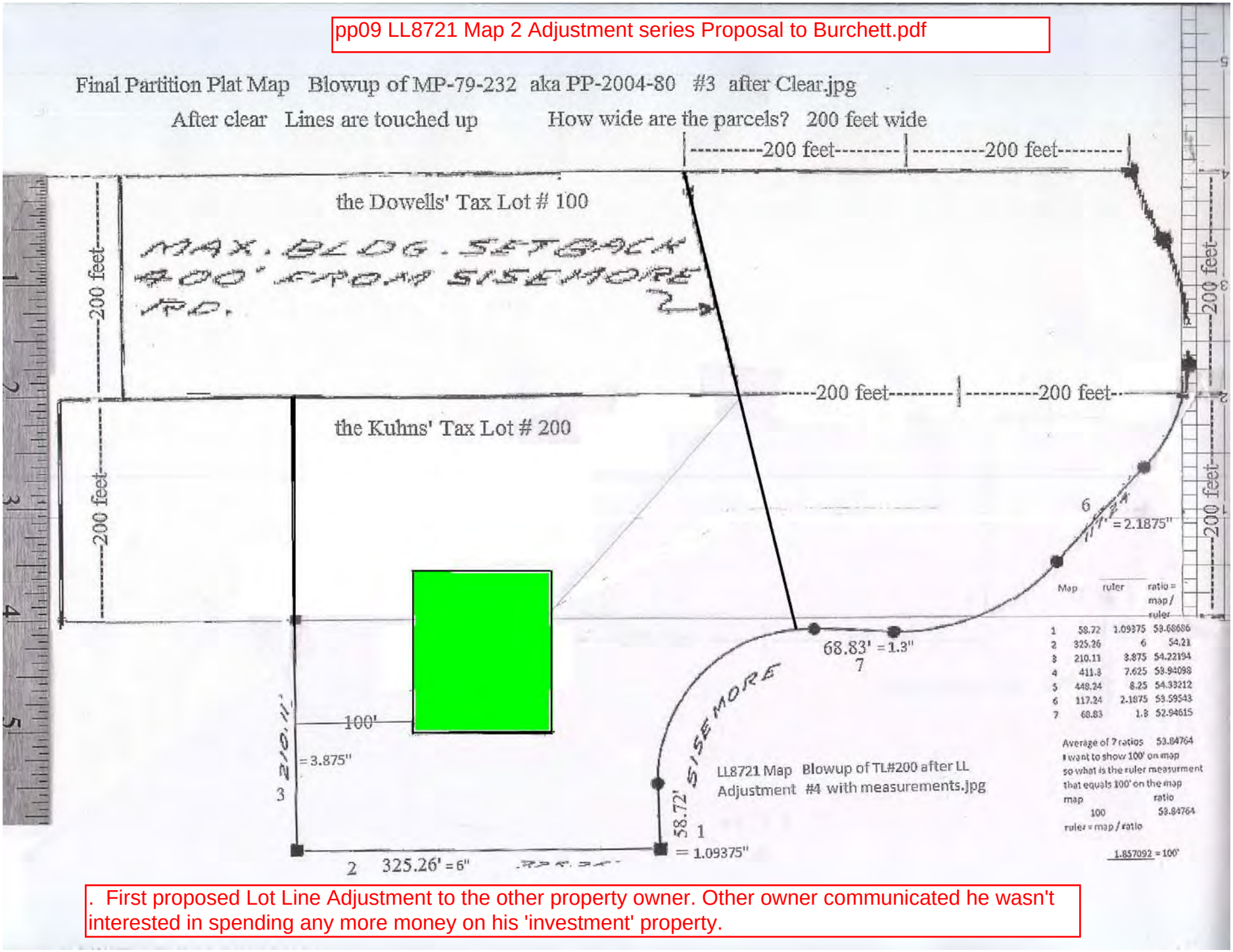


. GREEN indicates where development can occur.

. PINK indicates where development CANNOT occur.

. A Lot Line adjustment was required of BOTH parcels.

pp09 LL8721 Map 2 Adjustment series Proposal to Burchett.pdf



	Map	ruler	ratio = map / ruler
1	58.72	1.09375	53.68686
2	325.26	6	54.21
3	210.11	3.875	54.22194
4	411.3	7.625	53.94098
5	448.24	8.25	54.33212
6	117.24	2.1875	53.59543
7	68.83	1.3	52.94615

Average of 7 ratios 53.84764
I want to show 100' on map
so what is the ruler measurment
that equals 100' on the map
map ratio
100 53.84764
ruler = map / ratio

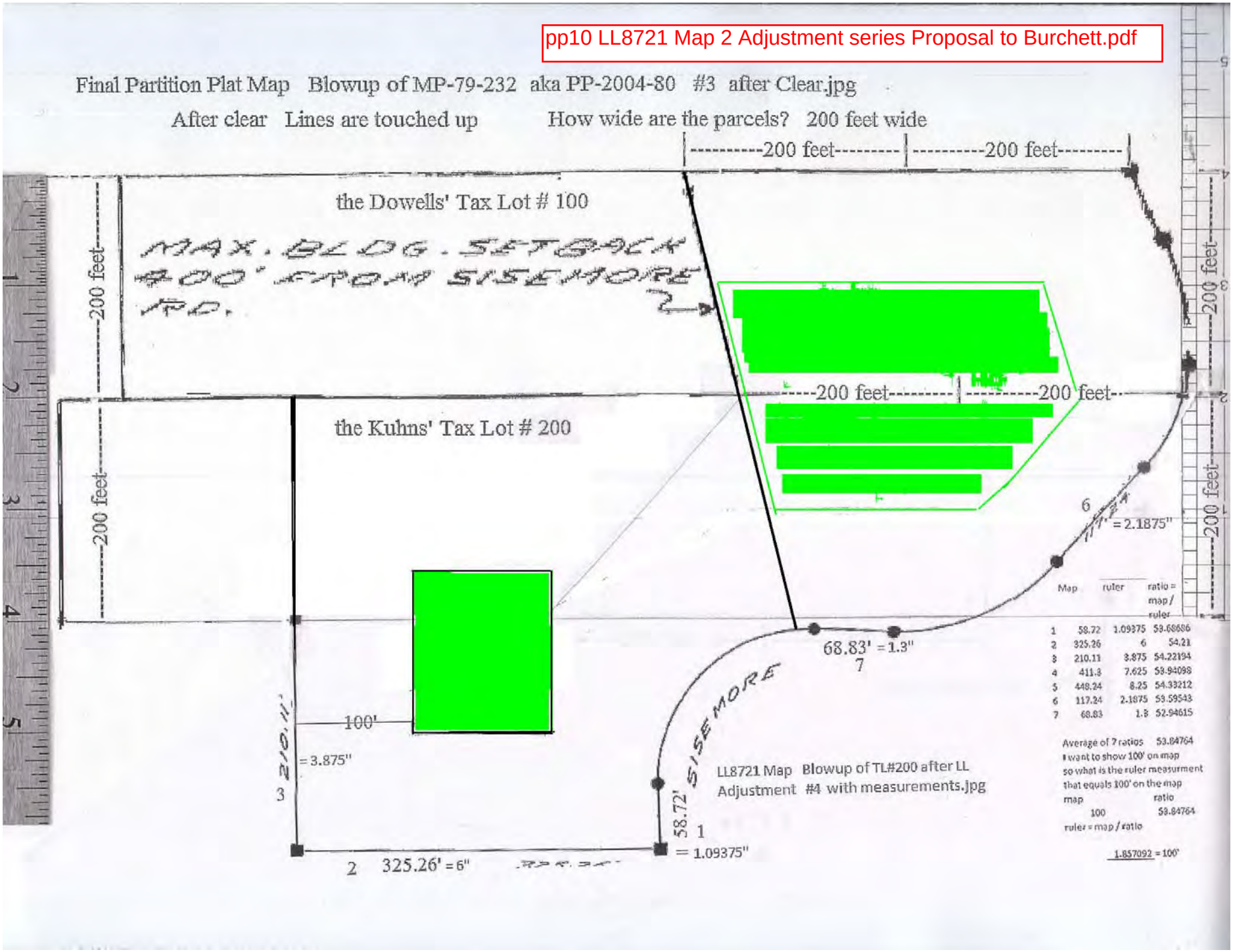
1.857092 = 100'

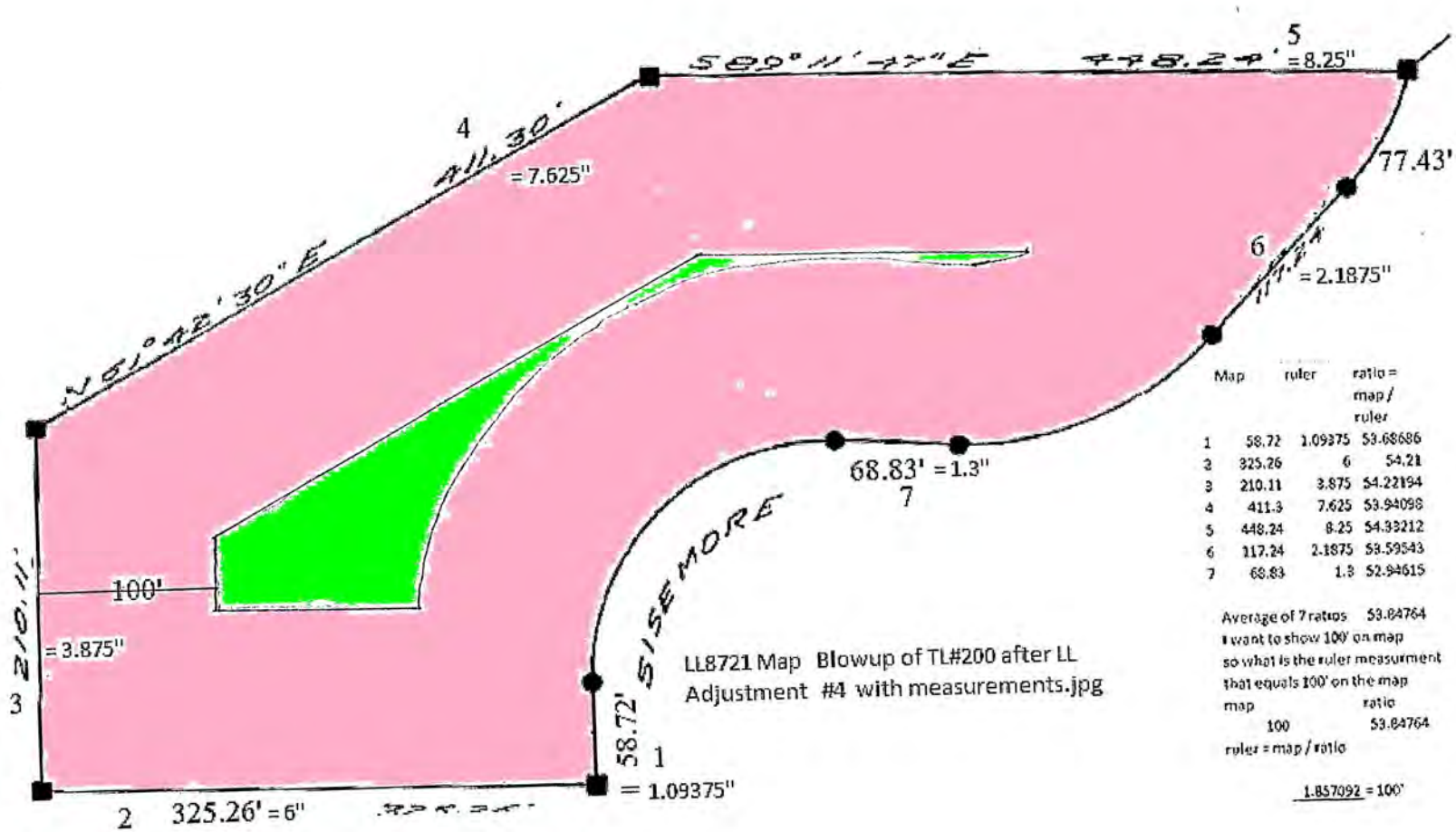
. First proposed Lot Line Adjustment to the other property owner. Other owner communicated he wasn't interested in spending any more money on his 'investment' property.

pp10 LL8721 Map 2 Adjustment series Proposal to Burchett.pdf

Final Partition Plat Map Blowup of MP-79-232 aka PP-2004-80 #3 after Clear.jpg

After clear Lines are touched up How wide are the parcels? 200 feet wide





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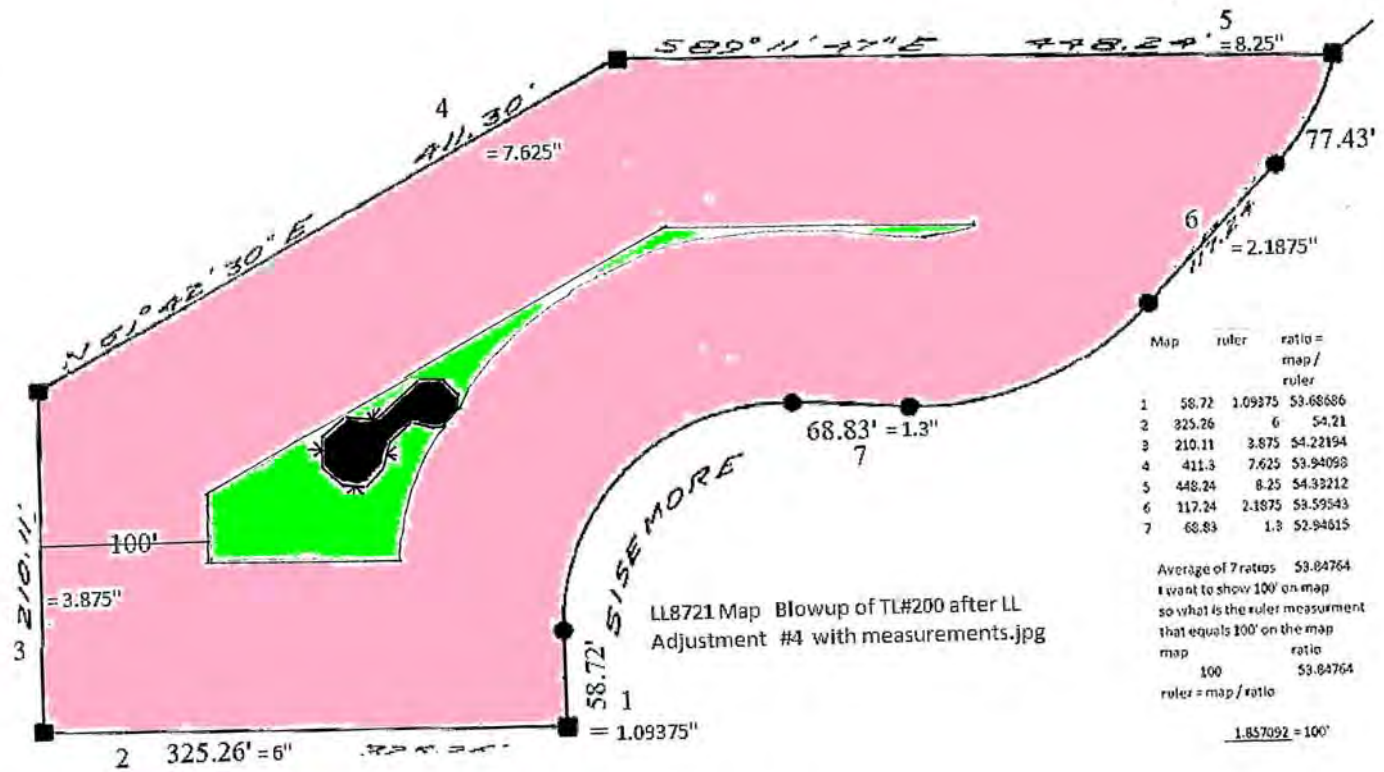
ruler = map / ratio

1.857092 = 100'

Buildable a.k.a. Building Envelope

NON-BUILDABLE Forest Zone 100' minimum Side Yard Setback

pp11 LL8721 Map After LL Adjustment with measurments and Building Envelope color.pdf



	Map	ruler	ratio = map / ruler
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7	68.83	1.3	52.94615

Average of 7 ratios 53.84764

I want to show 100' on map so what is the ruler measurement that equals 100' on the map

map	ratio
100	53.84764

ruler = map / ratio

1.857092 = 100'

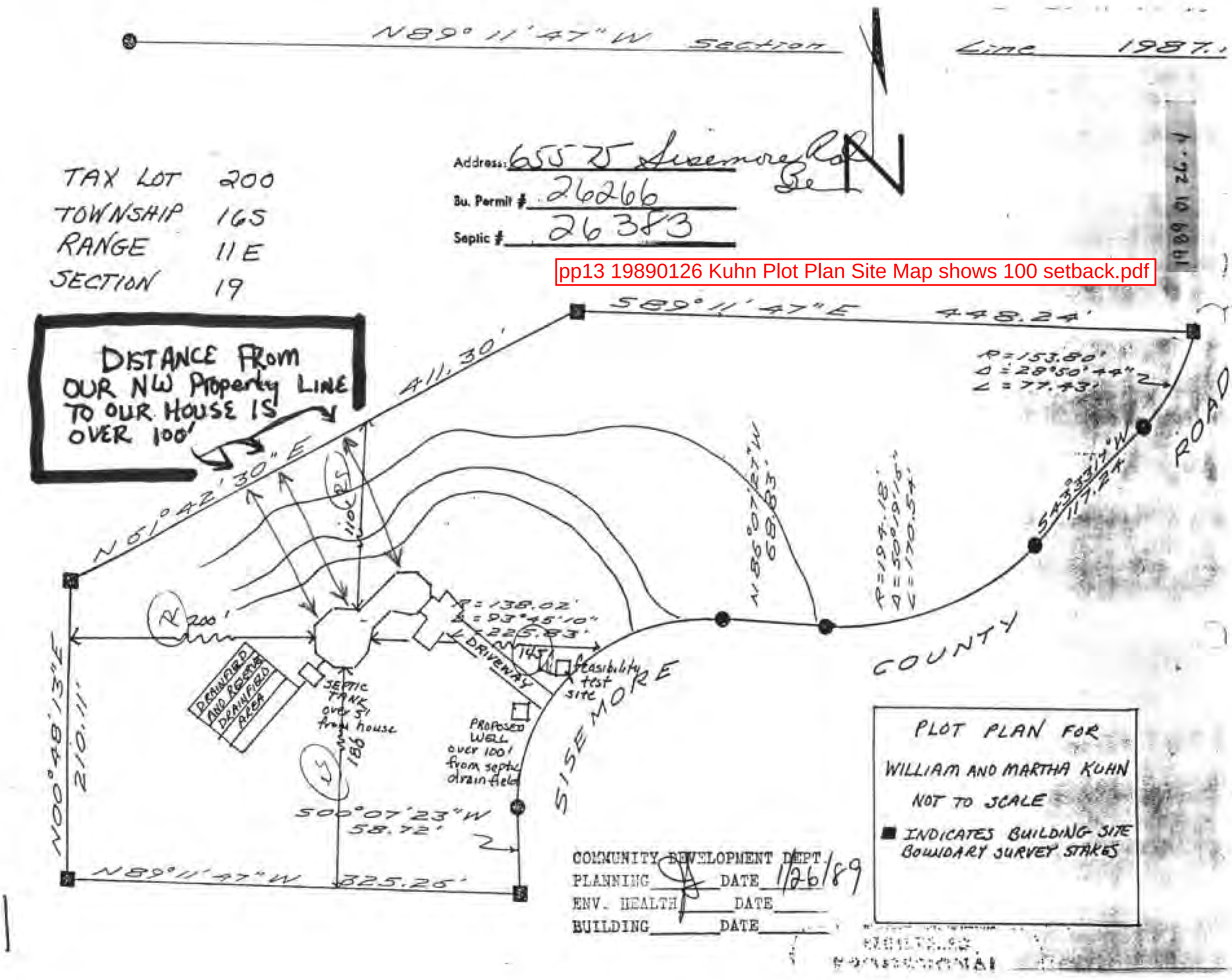
Buildable a.k.a. Building Envelope

NON-BUILDABLE Forest Zone 100' minimum Side Yard Setback

pp12 LL8721 Map After LL Adjustment with measurments and Building Envelope color w houset.pdf

'

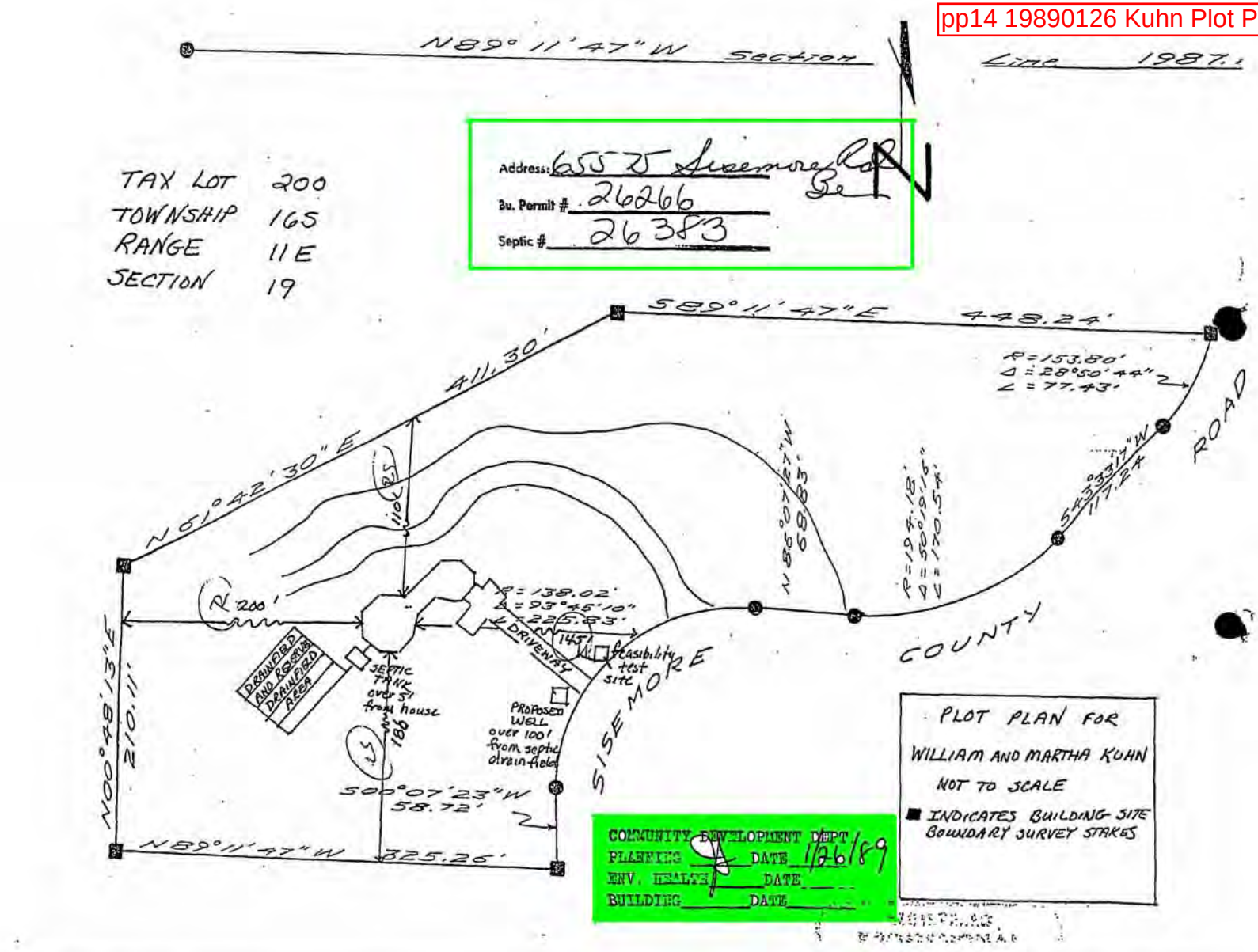
. The Kuhns were limited down to the inch as to where they could build.
. The Kuhns followed the County Code.
. The other party did NOT follow County Codes.
. The other party violated the Final Partition Plat Map by building outside of the building envelope
. The other party violated their own acreage overview map as submitted in their LM-92-9 application.
.



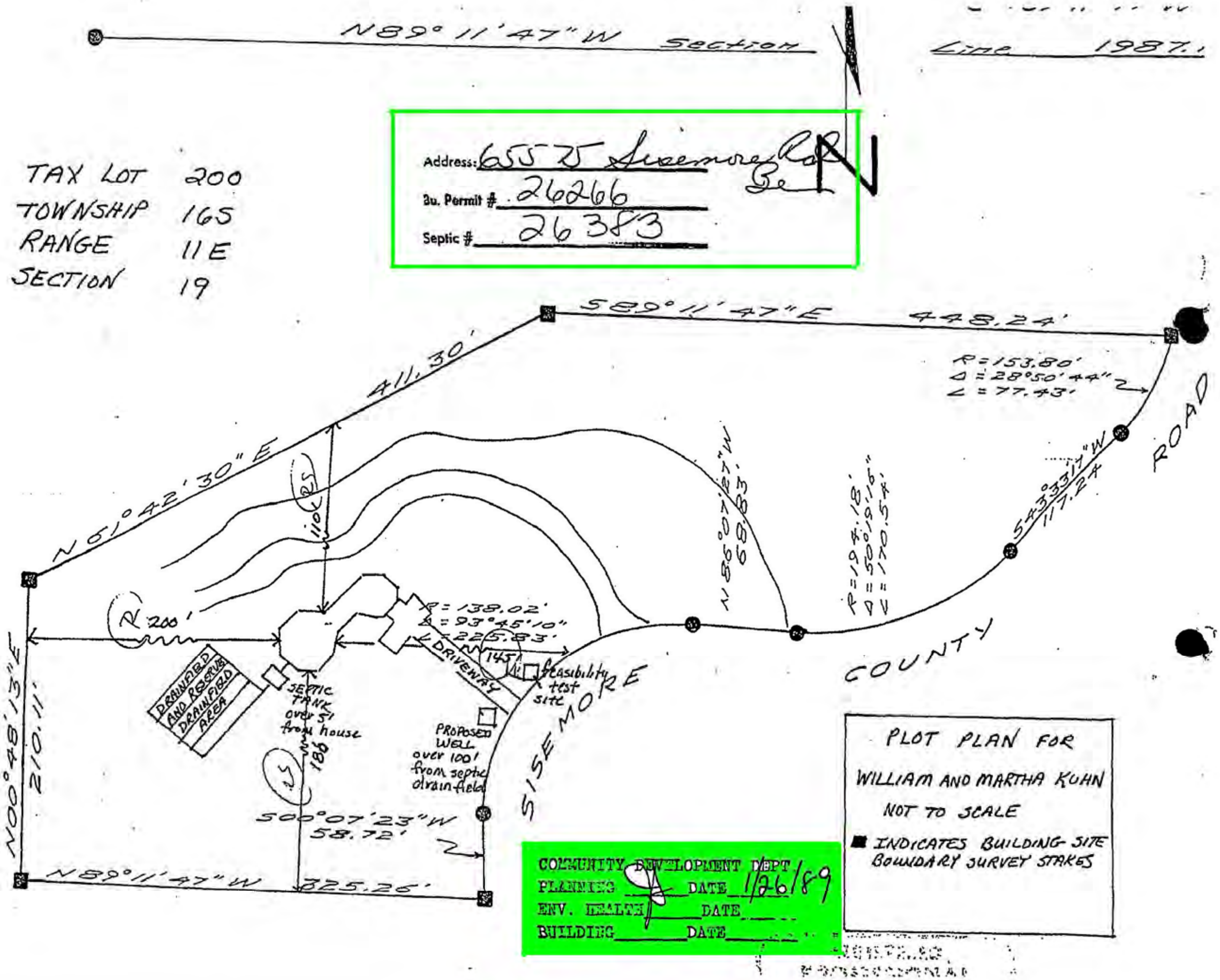
pp13 19890126 Kuhn Plot Plan Site Map shows 100 setback.pdf

19890126 Kuhn Plot Plan Site Map shows 100 setback.pdf

pp14 19890126 Kuhn Plot Plan Si.pdf



. Please note that ONLY the Kuhns have this County Planning sign-off with date.
. The Dowells do NOT have this type of sign-off from County Planning.
.


N89° 11' 47" W Section Line 1987.
Address: 65525 Sisemore Rd Be
Bu. Permit # 26266
Septic # 26383
N
TAX LOT 200
TOWNSHIP 16S
RANGE 11E
SECTION 19
S89° 11' 47" E 448.24'
411.30'
N61° 42' 30" E
R=153.80'
Δ=28°50'44"
L=77.43'
S43°33'17" W
117.24
ROAD
N86°07'27" W
68.83'
R=194.18'
Δ=50°19'16"
L=170.54'
COUNTY
R=138.02'
Δ=93°45'10"
L=225.83'
R 200'
110'
25
145'
DRIVEWAY
feasibility test site
DRAINFIELD AND RESERVE DRAINFIELD AREA
SEPTIC TANK over 5' from house
186'
PROPOSED WELL over 100' from septic drainfield
SISEMORE
N00°48'13" E
210.11'
S00°07'23" W
58.72'
N89°11'47" W 325.26'
COMMUNITY DEVELOPMENT DEPT
PLANNING DATE 1/26/89
ENV. HEALTH DATE
BUILDING DATE
PLOT PLAN FOR
WILLIAM AND MARTHA KUHN
NOT TO SCALE
INDICATES BUILDING SITE BOUNDARY SURVEY STAKES

William John Kuhn

Martha Leigh Kuhn

PO Box 5996 Bend, Oregon 97708-5996 Phone: (541) 389-3676

Wednesday 3 February 2016

20160203 Kuhn 1 Regarding the First Supplemental Argument on Appeal submitted on 20160127 by Smith.pdf

Regarding the First Supplemental Argument on Appeal submitted on 20160127 by Smith

Dear Ms Smith,

This is our rebuttal to your First Supplemental Argument on Appeal submitted on 20160127, and we will be asking the County to reopen the hearing.

Ms Smiths submissions from 27 January 2016 titled

First Supplemental Argument on Appeal

I. EXHIBITS:

A-9. Original Purchase and Sale Contract
A-10. Corrected Purchase and Sale Contract
A-11. Photos of Signs and Brush Piles

II. PURPOSE:

The purpose of this First Supplemental Argument on Appeal is to provide additional testimony, with some supporting argument, to respond to, supplement, or clarify testimony delivered at the January 13, 2016 public hearing.

Jeff and Patti Dowell (the "Dowells") also want to acknowledge that the Dowells, Leigh and Bill Kuhn (the "Kuhns", individually Bill Kuhn is referred to as "Kuhn"), and Deschutes County (the "County") have all made mistakes, taken regrettable actions, and been harmed at various points throughout this 25 year plus process. The purpose of this appeal is not to determine who is most at fault. The parties will never agree on the course of events that led to this point and venturing down that rabbit hole is what has caused this ordeal to drag out as long as it has. Rather, the purpose of this appeal is to find a path forward.

Thank you for the lead in for our first documentary film titled ***A-WayForward.com***. The web-site had been building viewership and as we add new documents, emails, photos, film clips from depositions, and statements from other viewers we are receiving comments and ideas that are very supportive and often helpful.

Accordingly, the Dowells are not going to document every mistake made, action taken, or harm suffered. While the Dowells could develop an extensive list of grievances, that is not germane to the current application. Rather, the Dowells will simply respond to the questions raised by the Commissioners and continue to focus on the issues actually pertinent to this appeal.

Denying the past burdens the future

There is and never was a level playing field for the Kuhns. The Dowells never had to play by the same rules. That has been our point. The Dowells never were the recipients of any of what was/is being done to the Kuhns – whether by Deschutes County or by the Dowells themselves.

The ongoing horrific repercussions of the decisions and choices made in close coordination and cooperation by Deschutes County and the Dowells' attorneys never impacted either the County or the Dowells as it did for the Kuhns. We will be glad to list them again if necessary.

Let us be clear, the Kuhns never did anything to any entity that was cruel, illegal, never lied about anything, never threatened harm or did harm to anyone.

Perhaps it is considered extreme and picky to abide by the intentions and letter of the laws, code, and what those laws were designed to protect. Others consider it character and integrity.

The Dowells' grievances consist of the Kuhns having to constantly ask Deschutes County to enforce the codes ordinances etc. of Deschutes County, because of the repercussions the Dowells actions had on the Kuhns' lives and property. The Dowells hugely benefitted by all we did, and by our original kindness to them. The Dowells continue to benefit. The appreciation in value of the Dowells' property was first and foremost benefitted by the Kuhns having to install the utilities, both phone and power underground as required by our deed restrictions.

We did not make up anything we submitted, and we can document it, and much more. If the Dowells can submit any documentation or evidence of any illegal, underhanded, harassing, physically harming or threatening, or destruction of property, or behavior by the Kuhns, we would like to see it.

The Kuhns would also like to see anything beneficial, kind, helpful, appreciative, etc., the Dowells ever extended to the Kuhns.

We believe the issues we submitted in our documentary film and in rebuttal are not only pertinent, they are germane to this appeal. They are germane to how to find A-WayForward.com and find a balance to the scales of justice if such can ever be found.

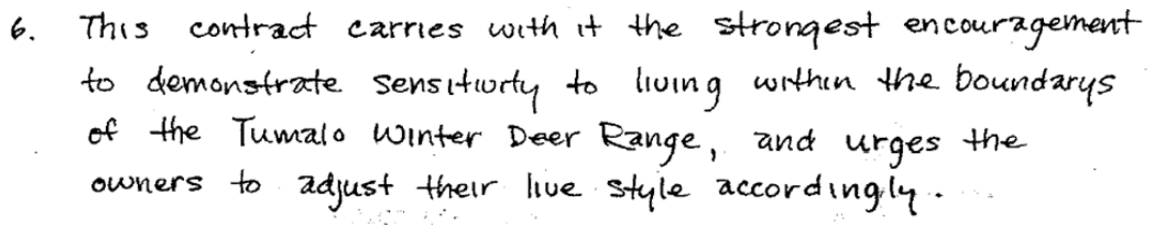
The past has everything to do with the issues actually pertinent to this appeal. Specifically the issues are these:

- Trust,
- Honor / Respect ,
- Intent,
- Land Use,
- Safety,
- And Obligation.

Each one of these issues matters.

The Kuhns welcome the Dowells to share with us their list of grievances so we can learn from them and improve ourselves and if appropriate apologize for them or make restitution for them.

If Mr. Dowell would have just bought title insurance, his title company would have prevented him from committing fraud. He also would have discovered that the Kuhns were correct about the deed restrictions, that they were recorded and did impact the entire cluster development. Maybe he would have also read and better understood the deed restriction that John Barton had originally written out as #6,


6. This contract carries with it the strongest encouragement to demonstrate sensitivity to living within the boundarys of the Tumalo Winter Deer Range, and urges the owners to adjust their live style accordingly.

To us that means his parcel, the wildlife parcel and even BLM are not a golf driving range. It is instead a wildlife habitat range.

III. 150 DAY RULE

The Dowells do not believe the 150 day rule applies to this Declaratory Ruling. To the extent it does, the Dowells hereby agree to toll the clock for 90 days from January 13, 2016.

If the Dowells do not believe the 150 day rule applies then why bring it up?

There is not a 150 day rule for declaratory rulings. That was the statement made by Nick Lelack in 2013 as per the email exchange submitted on the 13th of January.

IV. LAND SALE CONTRACT/DEEDS

Kuhn indicated that the Dowells fraudulently sought to assert ownership over the Open Space Parcel and perhaps the Kuhn Parcel. The Dowells have never sought to assert any ownership right beyond their ownership of the Dowell Parcel and their Y2 interest in the Open Space Parcel.

The Dowells' understanding of Kuhn's allegation is that the legal description used in the Dowells' original purchase and sale documents (Document No. 1989-24952 attached as *Exhibit A-9)* did not signify that the Dowells were only acquiring a 1/2 interest in the Open Space Parcel. The Dowells' predecessor in interest, Mark Burchette prepared the document.

> The allegation is that it is a fraudulent document because it claims the wrong property. It describes the wrong property. Was it a mistake – YES it was. We claim that the Dowells were informed by County in mid-1990 when the County cartographer discovered the inconsistencies when he compared what Dowell was claiming and what the Kuhns claimed. We did not testify in civil court as Mr. Dowell did when he said that one late night, nine months after purchasing his property he got out his purchase contract and read over the metes and bounds and discovered that they were wrong. When Mr. Dowell was asked during deposition to read some metes and bounds he didn't know how to.
>
> A letter was not sent to the Kuhns to correct our purchase contract because we did not make such a mistake. We used a realtor. We used a title company to guide us through the purchase process; we did not skimp when it came to buying one of the most important purchases of our lives. We did our due diligence.
>
> The Dowells did not do their due diligence and we have suffered ever since the Dowells tried to purchase property they never should have bought in the first place, because they wanted to have dogs on their property in violation of the deed restrictions.
>
> (NOTE: Burchett is the correct spelling. You claim that Mr. Burchett wrote the 1989 Contract Deed, well if so you would presume that he knew how to spell his own name when he typed up and then signed the Contract Deed.)

Failing to acknowledge the ½ interest in the Open Space Parcel was erroneous, not fraudulent. As soon as the error was discovered, it was corrected (Document No. 1990-20037 attached as *Exhibit A-10).* The Dowells have always acknowledged Kuhn's ownership interest in the cluster development and have never claimed that ownership as their own.

> Actually, that is exactly what happened between the date of their first recorded contract and the second recorded contract. That is why the Dowells were sent the letter by the County Surveyor.

Kuhn also claimed that the County accepted fraudulent documents prepared by the Dowells. This argument was not further developed, so the Dowells cannot provide a specific response. If Kuhn was referring to the original purchase and sale agreement, while erroneous, it nonetheless serves as evidence that the Dowells acquired an interest in the Dowell Parcel as might be required to pull a building permit. To the Dowells'

knowledge, the original purchase and sale agreement has not been used by the County for any purpose, if at all, other than to determine that the Dowells have an interest in the Dowell Parcel.

> The Dowells' attorneys and BLJ should have known better than to submit a voided fraudulent contract when they could have submitted the later contract. The Dowells' attorneys KNEW of the voided contract because we brought it to their attention in 1999 when we interviewed Robert Lovlien at BLF to see if they were suitable to hire, which they weren't.

If Kuhn believed there was an error in paperwork relied on by the County several years ago, he should have raised it back then and supplied more information as to its significance. Alleging unsubstantiated fraud by the Dowells and/or the County is not productive or relevant for determining the required elements of the required maintenance agreement.

> The Kuhns did bring it to the attention of several County staff on several occasions beginning in 1997. Kevin Harrison, Paul Blikstad, the current Administrator Tom Anderson, when he was Assistant Planning Director, among others were all made aware of the fraudulent document.
>
> That was also why we brought it forward during the M-37 claim hearing. The Kuhns wanted to make sure this Commission was aware what their legal staff had originally accepted, and then had to re-do their own paperwork because the Dowells attorneys had failed to do their due diligence. It was the County who did the research regarding our allegations rather than make the Dowells provide the legal proof of their ownership.
>
> What the Kuhns know is this: If Mr. Kuhn, in his business, were to have used a document that the County Assessor wouldn't and couldn't have used to determine tax assessments, which the County Assessor took the time to write the Dowells about, if Mr. Kuhn had done that he could lose his license to conduct business.

IV. SPITZ REPORT

Kuhn did not make any specific argument with respect to the Spitz report contained in Exhibit 3 to his 2015 Property Tax Appeal. However, this document does not address the issues in this appeal as it is clear that the Spitz Report was drafted for purposes of determining valuation of the Open Space Parcel and not for determining the requirements of a maintenance agreement. [1] To the extent the Spitz Report discusses maintenance of the Open Space Parcel, such discussion does not inform the requirements of the required maintenance agreement. In the course of determining valuation, the Spitz Report identifies potential uses of the property, the condition of the property as it relates to wildlife, and potential management regimes to promote wildlife. As is outlined in the Dowells' Argument on Appeal, wildlife management is not the exclusive purpose of this parcel. The Spitz Report provides no analysis of the legal requirements for the maintenance agreement and appears to be based on Kuhn's view that the sole purpose of the open space parcel is wildlife habitat.

[1] The opening line states, "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."

Response to the IV. Spitz report:

As stated at the Appeal Hearing, the purpose of reading and understanding the Spitz Report was to clearly show:

- what is on the parcel,
- how fast the vegetation grows,
- what the dangers are of fire fuel buildup,
- how much it costs to deal with that vegetation growth.

I might also point out that the report was done by a forestry expert not a wildlife specialist.

This is also the reason for our requests for a site visit report. How can the Commission make a determination regarding "maintenance" if the Commission doesn't know what it actually means to provide maintenance?

This is why we've asked every Commissioner to come out and visit our parcel, examine and feel what the wildlife parcel is and how we have been maintaining it, and to walk around the Dowells' parcel which is only 200' wide in a forest zone which requires a 100' side yard setback on all sides. By doing so they would also be able to see for themselves how much fill was put on the Dowells' property well beyond the 400' maximum building line as shown on the final partition plat map, and also well beyond the 300' measurement from Sisemore Road as it is described in CDD 18.88 Wildlife Area Combining Zone. Either way you measure it, it's illegal because it wasn't put in the Dowells landscape management plan (which is in the record) and there was no development application or mention anywhere in the LM-92-9 file.

V. SETTLEMENT AGREEMENT

Applicant addressed the Settlement Agreement included as Exhibit 4 of Kuhn's 2015 Property Tax Appeal in its Argument on Appeal. The settlement agreement, including any stipulations therein, is not binding on this proceeding because it was not actually adjudicated, the Dowells are not a party to the tax appeal, and the purposes of the two proceedings are entirely distinct.

If the Dowells are not a party to the tax appeals we have made, then why did the Dowells financially benefit from them?

Based on the argument made by Ms Smith we request the County Assessor to withdraw the tax benefit the Dowells received as a result of the Settlement Agreement, adjudicated or not.

VI. ORS 105.820

Kuhn implied at the public hearing that he is entitled to a share of the rents paid by tenants of the Dowell Parcel pursuant to ORS 105.820. ORS 105.820 provides:
A tenant in common may maintain any proper action, suit or proceeding against a cotenant for receiving more than the just proportion of the rents or profits of the *estate owned by them in common.* (emphasis added)

As it clear from the plain language, this statute only provides a remedy for rents earned from jointly-owned property (i.e. the Open Space Parcel). The Dowells have never charged any rents for Tax Lot 300. The Dowells have occasionally collected rents from tenants of the Dowell Parcel. The Dowell Parcel is not owned in common with the Kuhns and thus ORS 105.820 does not apply to the Dowell Parcel.

At the beginning of their ownership, the Dowells did allow guests and tenants of the Dowell Parcel to use the Open Space Parcel. However, no rent was charged for using the Open Space Parcel and a tenant in common is allowed to bring guests onto commonly owned property [2]. In any event, the Dowells have since advised all guests and tenants to avoid the Open Space Parcel. Using the Open Space Parcel, whether by the Dowells or their guests, has only created conflict with the Kuhns who have effectively asserted dominion over the Open Space Parcel.

[2] The Kuhns erected signs pointed at the Dowell Parcel requiring persons to obtain permission of the Kuhns prior to using the Open Space Parcel. See *Exllibit A-1 I.* A tenant in common is not required to obtain permission from the other tenant in common to allow guests on jointly owned property provided such guests do not unreasonably interfere with the use of the common property by the other tenant in common. ORS 105.050 provides a remedy for a co-tenant that has been denied use of commonly-owned property.

We have no proof of Ms Smith's statements.

1) Do the Dowells carry liability insurance on the wildlife habitat parcel tax lot #300? Can the Dowells prove it?

2) Is there a plaque posted on the inside door of the Dowells' structure similar to one that might be posted in motel rooms as to what the "rules and regulations" are for the occupying itinerants or tenants that specifically states they do not have the right to use the wildlife parcel?

3) Is there a contract that the Dowells ask the itinerants to sign saying they will not bring dogs to the property? That when they shoot paint balls at each other they will not land on either the Kuhns' property or the wildlife habitat? Those paint balls are not healthy to eat. There are warning labels on the packaging about eating them. Are the deed restrictions posted anywhere for these invitees? What happens when they are ignored? Who is responsible for enforcement? Who is responsible for damages? Who is responsible for protecting the endangered species on tax lot 300 – the wildlife parcel? Do we have to sue the Dowells every time we are harassed by the Dowells' invitees? Who compensates us?

4) We can submit if asked several communications from the Dowells' attorneys at Bryant Lovlien and Jarvis that demand the Dowells invitees to have access to the wildlife parcel. Between 2002 that are 20 to 25 documents between our attorney and the Dowells attorneys that exist and are part of the long litigation between parties.

5) Mr. Reinecke admitted in his communications that **the Dowells have charged rent** and **the Dowells do let their renters and invitees to use the wildlife parcel**. To say otherwise is not true.

6) To allow almost 20 years of a parade of unknown people to occupy the Dowells' tax lot 100 is an abuse of the requirements and restrictions on this cluster development. It is an abuse of their obligations of ownership. It is a deliberate abuse of common courtesy to the Kuhns.

VII. DIFFERENT BUILDING DESIGN

At the public hearing, Kuhn argued that the Dowells deceived the County by changing building designs from originally submitted plans. Again, he did not point to any specific evidence to support his allegations. Plans for structures on the Dowell Parcel did change over time as a consequence of the variety of issues associated with the cluster development coming to light. However, the structure on the Dowell Parcel, received all proper permits and inspections.

Actually it did NOT receive signoff by County Planning Division and neither the County nor the Dowells have ever been able to prove otherwise other than the County computer system which even Damian Syrnack when he discovered the error could not show us the proof necessary. The only sign off was from the Building and Safety Division. Both are required.

The code violations based on our most recent viewing of the code complaint files are still OPEN. There is no notification in these files that these violations are still active. That is why the Dowells Dial website has the OPEN Code complaints warning still showing.

VIII. MANAGEMENT OF THE OPEN SPACE PARCEL

Kuhn's claims that the Dowells have never contributed to management of the Open Space Parcel are overstated. The Dowells have made numerous offers to contribute to maintenance both physically and financially including proposing to take over maintenance entirely. These offers have always been rejected or unreasonably conditioned.[3]

[3] In apparent retaliation for the Dowells rejecting the Kuhns unreasonable demands, Kuhn began stacking brush removed from the Open Space Parcel adjacent to the Dowell Parcel. As of summer of2013, there were approximately 6 piles and 3 signs. The Cloverdale fire department representative informed the Dowells that the piles are a fire hazard to the Dowells house and property. See *Exlliblt A-ll* (note the yellow rope that Kuhn set out as an unofficial marker of the property line).

Kuhn response to: VIII. MANAGEMENT OF THE OPEN SPACE PARCEL

The Dowells being out of state, absentee landowners between 1989 through 2013 and absentee landowners through today have never pulled one weed on the wildlife parcel, and only pull weeds on their own property when forced to do so by the County. It is hard to believe they would ever maintain anything and we have no expectation of such.

Regarding the foot note #3 above and for clarification the Kuhns began using brush on their property in 1994 to stop the erosion caused by the rapid flow of water down the poorly planned utility line easement across our property. Knowing now that the Dowells intended to dishonor the placement of where they told us where and what they would actually build instead of what they told the County in their LM-92-9 we never would have granted the easement.

If the Dowells wish to ask for a lot line adjustment so they can come into compliance with the 100' side yard setback requirements stated in what was DCC 18.44 for Forest Zone 3 and what it currently says in DCC 18.40 for Forest Zone 2 then let's sit down and negotiate. In the meantime the piles will remain until they are no longer necessary. In the meantime they give shelter to wildlife.

As is evident from the documentary shown at the public hearing, the Kuhns have a strong connection to the Open Space Parcel and a specific vision for how the property is to be used and managed. Part of what has made it difficult to enter into the required maintenance agreement is that the Kuhns seek to impose a management regime that is well beyond that required by law or contemplated by the average homeowner. The Kuhns then demand compensation for pursuing these voluntary actions.

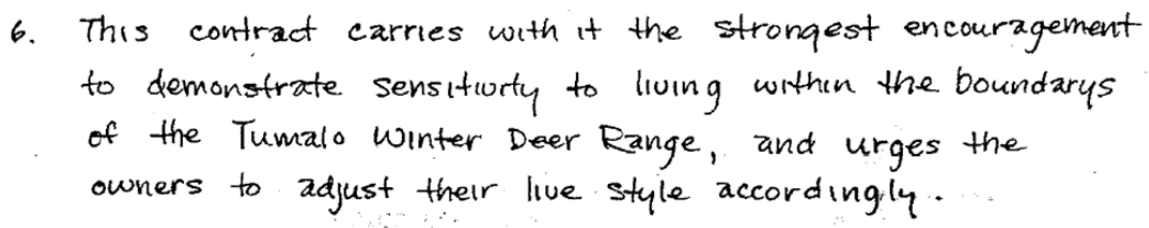
These "voluntary actions" are actually obligations for owners in this cluster development.

The Kuhns and the Dowells are not supposed to be average homeowners and the Dowells knew that before their first sales contract was signed. The wildlife maintenance parcel has pertinent and directive limitations all toward the maintenance as a wildlife parcel. That is one reason for deed restriction #6. And that deed restriction was agreed to in both 1989 and their 1990 contracts.

The wildlife parcel is not like the "common land" at Tetherow, which abuts homes and golf courses. Our "common land" is within a wildlife area overlay and was ONLY possible because John Barton wouldn't have been able to divide his property without the wildlife parcel being considered "for the wildlife habitat".

The Dowells commend the Kuhns for their devotion to the Open Space Parcel, and find it an admirable pursuit, but cannot commit themselves to writing a blank check for what is ultimately the Kuhns' passion project. This is particularly so where the Kuhns pursue these activities without consulting the Dowells. Unless the County determines that maintenance need only be the level that keeps the Open Space Parcel compliant with applicable law and such other expenses as the parties may agree, the parties will argue in perpetuity over the level of management required and how to apportion expenses.

The Kuhns have for years presented several issues that need to be addressed regarding the significant problems with 50/50 ownership when one of the parties is an absentee land owner. We also presented many proposals for resolving this problem. The Dowells have presented proposals that we find "unreasonably conditioned."


6. This contract carries with it the strongest encouragement to demonstrate sensitivity to living within the boundarys of the Tumalo Winter Deer Range, and urges the owners to adjust their live style accordingly.

In the meantime the piles will have to remain until they can be shredded or removed. We will not allow them to be burned.

The Dowells' structure is illegally sited based on County Code. The fire issues mentioned by Ms Smith are equally if not more dangerous due to the weeds around the Dowells' structure.

IX. LOT LINE ADJUSTMENT

The Dowells do not understand the relevance for raising this issue. If it is being cited to question the location of the structure on the Dowell Parcel, that issue has been resolved conclusively against the Kuhns by LUBA and the courts. Again, past mistakes or harms suffered, valid or otherwise, are not relevant for determining the required elements of the required maintenance agreement.

We can document that Deschutes County made false and misleading statements to more than one judicial tribunal. It is again fruit from the poisonous tree, therefore, the County has the right to reopen all issues discussed and/or mentioned during this appeal process.

When you read the transcript from Judge Adler, after he heard the evidence he ordered the Dowells to enter into an agreement with the Kuhns and not the other way around.

See statements made above in response to Management of Open Space.

X. ASSAULTS, SHOOTINGS, AND BOMBINGS

The documentary evidence and testimony submitted by Kuhn imply that the Dowells have engaged in a variety of violent criminal activity directed towards the Kuhns. The Do wells do not dispute that the Kuhns have been the victim of certain crimes, but unequivocally deny that the Dowells perpetrated or had any role in any criminal activity. The Dowells have been investigated numerous times at the insistence of the Kuhns.[4] The Dowells have always cooperated in these investigations and have never been charged with any crime.

Sheriff Les Stiles, in front of then Under-Sheriff Blanton, apologized for the actions and methods of investigation used by Cpl. Morgan, who was reprimanded for his work.

Given that the investigations done by both the Sheriff's Department and the District Attorney in the 2000-2001 time period did not have all of the email evidence currently available it is no wonder that no charges were made against the Dowells. That evidence was surrendered by the Dowells when they had to turn over all emails between the Dowells and Barton, Cibelli, Watts, and others as part of the discovery process in 2002-2003.

Jeff and Pat Dowell went around to our neighbors, friends, and colleagues, and, in Leigh's case, clients, spreading ugly lies and false rumors that continue to affect us. It's called slander. Is this OK? We know they did this because the people that were approached told us, or otherwise let us know.

XI. SITE VISIT REPORT

Kuhn has not cited any requirement for any county employee to complete a site visit report whenever they visit a property. There are a host of valid reasons why such a report would not be completed, but we need not explore this issue when it is not relevant for determining the required elements of the required maintenance agreement.

See the Spitz report.

The County Commission is going to make a determination as to what maintenance is, what it will apply to, and who has performed the work to date. It has not been the Dowells.

XII. OUTDOOR LIGHTING

The Dowells had a number of single female tenants early in their ownership of the Dowell Parcel. Once the relationship between the Kuhns and Dowells became hostile, Kuhn began surveilling occupants of the Dowell Parcel, which included logging visitors to the Dowell Property and spying from the bushes with binoculars. This behavior prompted a call to law enforcement, who advised that leaving the lights on was a good deterrent to inappropriate behavior.

At the time, the Dowells and Kuhns were also involved in protracted civil litigation over a variety of issues including outdoor lighting. During the pendency of those proceedings, the Dowells continued their lighting practices. When the litigation concluded after two years, the Dowells discontinued their lighting practices as ordered by the court.

We consider Ms Smith's comments to be a sleazy attempt at character assassination. Please see our previous submissions and the film documentary A-WayForward.com for further interpretations of what was actually happening, and why constant vigilance was necessary.

Regarding "the lighting practices after court" we have communications from our attorney to the BLJ attorney showing that we had to threaten to go back to court many months after we left the court room because the light harassment was ongoing long after litigation was concluded. The Dowells refused to even pay the $5,000 court-ordered fine until we put a lien on their property in Vancouver Washington.

XIII. POWER TO THE CLUSTER

The Kuhns did pay to extend power up Sizemore Road.

Note: It's **Sisemore** Road.

When the Dowells first attempted to bring power to the Dowell Parcel, the Kuhns approached them about reimbursement for those costs. The Dowells thought that neighborly and initially agreed to pay. No price was discussed in this initial exchange. The Kuhns subsequently requested an amount in excess of $10,000.00, which was substantially higher than the Dowells expected.

The first sentence in the above paragraph makes no sense. The Dowells never attempted on their own to bring utilities to the cluster.

The Kuhns did give the Dowells the particulars they had investigated with Central Electric Co-op as we explain below. We did not request a specific amount.

The Dowells then investigated options for obtaining power other than by connecting to the Kuhns' extension. This led them to contact Central Electric Cooperative, Inc. ("CEC"). CEC informed the Dowells that CEC runs a reimbursement program to address precisely this type of situation. Specifically, CEC indicated that it determines the value of those extensions and equitably collects from benefitting customers to reimburse customers that extend power lines. CEC revealed to the Dowells that Kuhn would be paid by CEC for the Dowells' connection through this program and, to the Dowell's understanding, they were.

Since Ms Smith wasn't present at the time of the Dowells' purchase in 1989 she certainly can't give testimony as to what happened when, or who said what to whom.

When the Kuhns first considered purchasing their property in 1987 they consulted with Central Electric Co-op for information on how and where power might come from along with US West/Qwest/CenturyLink for the added phone lines. The estimated costs for underground utilities almost doubled the cost of the property coming in between $33k and $38k.

We knew we couldn't handle that cost alone. We also knew there were five parcels here that would ultimately need utilities. In the meantime we bought a small 3HP generator with a remote starter on it in 1988 to use during construction.

When the Dowells came down the drive just prior to their purchase in 1989, we told the Dowells what the estimates were. We wanted them to know that because we wanted help with the utilities.

Mr. Dowell's response was that they would help, that they thought that was the neighborly thing to do. Then they decided not to help and wrote that there was no law that compelled them to participate.

From Smith's footnotes:

[4] Similarly, Kuhn filed a complaint with the Oregon State Bar against Bob Lovlien. The Bar investigated and found no professional misconduct.

The Kuhns respond that the Oregon State Bar Association, as recently as this week, has no objection to the Kuhns resubmitting our complaint on the basis that we previously, deliberately didn't submit the letter with documentation from 1999 as evidence with our original complaint because we didn't want our thoughts and privileged communications to become part of the public record. We have since decided that we are now prepared to resubmit for reconsideration because ETHICS complaints do not have a statute of limitations.

Does Ms Smith have objections to our resubmitting? If so, please tell us why.

SUBMITTED this 27th day of January, 2016
By Smith

SUBMITTED this 3rd day of February 2016

William and Leigh Kuhn

BEFORE THE DESCHUTES COUNTY COMMUNITY DEVELOPMENT DEPARTMENT

DR-13-16	)	**SECOND SUPPLEMENTAL**
As modified by	)	**ARGUMENT ON APPEAL**
MA-14-1	)	**(REBUTTAL)**
	)	

APPLICANT/OWNER: Jeff and Patti Dowell
c/o Bryant, Lovlien & Jarvis, P.C.
591 SW Mill View Way
Bend, Oregon 97702

ATTORNEY: Sharon R. Smith
Bryant, Lovlien & Jarvis, P.C.
591 SW Mill View Way
Bend, Oregon 97702

LOCATION: 65595 Sisemore Road, Bend, OR 97701
Tax Map: 16-11-19, Tax Lots 100, 300,
Deschutes County, Oregon.

REQUEST: Declaratory Ruling for an interpretation of the requirements (specific provisions, required signatures, and any other considerations) necessary to satisfy Condition of Approval #2 of CU-80-02, which mandates an 'acceptable written agreement' prior to the sale of any lot in the cluster development established by CU-80-02.

I. EXHIBITS:

A-12 February 3, 1995 letter from County re Building Permit Status
A-13 Building Permit Status showing "Final Approved"

II. PURPOSE:

The purpose of this Second Supplemental Argument on Appeal is to provide rebuttal to the additional testimony and evidence provided by Leigh and Bill Kuhn (collectively, the "Kuhns", Bill Kuhn is individually referred to herein as "Kuhn").

III. FRAUDULENT DOCUMENTS

The Dowells addressed the "fraudulent document" accusations in the First Supplemental Argument on Appeal. Plain and simple, an erroneous legal description was provided by the

seller and incorporated into the documents. Once discovered, the error was corrected. There was no fraud or nefarious act to assert ownership over the Kuhns' interest in the cluster development.

County Legal Counsel was absolutely correct that Document No. 16111900001000T20070524162816 (this is the same as Dowell's Exhibit A-9) can be used to demonstrate ownership. As previously mentioned, the instrument is not wholly invalid because of the erroneous legal description. Rather, the legal effect is that only that portion of the legal description actually owned by the Grantor transfers to the Grantee.[1] As the seller only owned a ½ interest in the Open Space Parcel and the Dowell Parcel, that is all the Dowells received from the Seller.

In regards to the deed restrictions, the Dowells failed to obtain a title report, which would have shown that dog restrictions applied to their property. Without such knowledge, the Dowells did not know that the dog restriction was missing from the purchase agreement provided by the seller. Accordingly, this was not fraud committed by the Dowells, but the consequence of relying on documents provided by the seller and failure to get a title report. The Dowells attempted to remove the dog restriction to no avail and have long since moved on from that issue.

IV. WILDLIFE USE

The cited language in Leigh Kuhn's "A Way Forward" dated January 27, 2016 does not demonstrate that the Open Space Parcel was dedicated exclusively to wildlife purposes. It simply demonstrates that certain uses harmful to wildlife were restricted. If the intent were to establish a wildlife refuge, the deed restrictions or CU-80-02 would have used express language to that effect. No such language exists.

Even Mr. Barton referred to the property as the "open space parcel" and not the "wildlife parcel". As further evidence that the parcel was not to be dedicated exclusively to wildlife purposes, Mr. Barton's application materials for the Cluster Development states:

> The 'open space' that is held in common ownership my [sic] not be used for the location of a private residence. However, it may be developed into irrigated or non-irrigated pasture land and my [sic] contain such farm buildings (barns, stables, greenhouses, as would be considered consistent with agricultural use.

Document entitled "pp05 19800218_CU-20-022_Application By JEBarton.PDF" submitted on January 27, 2016 by Kuhn.

[1] The County's cartographer is not qualified to evaluate the validity of a legal document, which should be apparent to the Kuhns. Moreover, the Dowells highly doubt the cartographer did anything more than identify the error in the legal description, a task for which he is well qualified.

V. SETBACKS/LOT LINE ADJUSTMENTS

The setback and lot line adjustment issues have been conclusively resolved against the Kuhns. Even the un-interested Oregon Land Use Board of Appeals, Deschutes County Circuit Court, and Oregon Court of Appeals found against the Kuhns on these issues. There is nothing left to review or argue on these issues.

VI. CONVEYANCE OF THE OPEN SPACE PARCEL

On several occasions the Dowells offered to convey their interest in the Open Space Parcel to the Kuhns. The reason these negotiations went on for years is that the Kuhns refuse to drop foreclosed issues (setbacks, past permitting, etc.) and continue to demand either ouster of the Dowells, additional financial compensation, or both.

The Dowells are still willing to convey the Open Space Parcel and even sell the Dowell Parcel, provided the Kuhns move on from settled matters and drop their unfounded demands for additional compensation from the Dowells. As conveyance of the Open Space Parcel is apparently the lynchpin for resolving this dispute, it is imperative that the Board reverse the findings of the Hearings Officer that the Open Space Parcel cannot be conveyed separate from the Dowell and Kuhn Parcels.

VII. DIVISION OF MANAGEMENT OBLIGATIONS FOR THE OPEN SPACE PARCEL

The Dowells are not proposing to partition the Open Space Parcel or otherwise divvy maintenance obligations based on geography.[2] Rather, the Dowells propose either conveying the Open Space Parcel to the Kuhns at outlined in ***Exhibit A-4*** or continued joint ownership of the Open Space Parcel subject to the management levels and cost sharing outlined in ***Exhibit A-5***.

VIII. LANDSCAPE MANAGEMENT/M-37 APPLICATIONS

Similar to the setback issues, these issues have been resolved conclusively against the Kuhn and cannot be "undone" as the Kuhns seem to believe. In any event, these issues are not in any way relevant to the present question of the required elements of the required maintenance agreement.

IX. COLLATERAL ESTOPPEL

The Dowells do not dispute that a plethora of errors, with all parties sharing some responsibility, were made in the past. However, unlike the Kuhns, the Dowells recognize the validity of past decisions and the limited jurisdiction of the Board of County Commissioners in the present proceeding. Presently, the Board is tasked with making a declaratory ruling on the question of the required elements of the homeowner agreement required as a condition of approval in CU-80-02. The Board cannot unwind all past decisions; particularly those made by a court, related to this dispute or grant the relief requested by the Kuhns. Stepping beyond the scope of the

[2] The Dowells had, in the past, proposed a splitting of the maintenance obligations based on each taking responsibility for half of the Open Space parcel, but that was withdrawn after the Kuhns objected.

question would not carry any legal weight and would only send this dispute spiraling further adrift.[3]

In regards to the fraud claims, the Kuhns cannot prove fraud because no fraud has occurred. Empty allegations do not permit the Board to disregard past valid decisions where all parties had an opportunity to participate.[4]

Where the Board can disregard past findings is the settlement agreement in the Kuhn property tax appeal. Such a document cannot be used as a sword against the Dowells because the Dowells were not participants to those proceedings and the stipulations in that agreement were never actually litigated.

X. DECLARATORY RULING PROCEDURE

The Hearings Officer made findings pertaining to the procedural issues raised by the Kuhns, and the Board should adopt those findings. The Kuhns have had a full opportunity to participate, retained counsel for proceedings before the Hearings Officer, and been accommodated at every step in this proceeding. Moreover, the Dowells have paid the application fees as well as the Hearings Officers' fees to explore issues the Kuhns are clearly interested in resolving.[5]

The Kuhns' alleged potential civil action against the Dowells, the County, or both is not a basis to find they have been prejudiced in this proceeding. The Kuhns have not been obligated to reveal any privileged or non-discoverable information and the question before the board does not require them to do so. Secondly, this proceeding has gone on for more than a year and this is the first instance in which such an argument has been made. Finally, if a party could simply claim that a land use proceeding hinders some to be filed lawsuit with unknown claims, such proceedings could never move forward to the prejudice of the applicant.

XI. REQUIRED PARTIES

In their 4th item for the County to Consider on page 12 of the "Kuhn Legal Opinion" dated January 27, 2016, the Kuhns appear to concede that the required agreement need not be between the Dowells and the Kuhns. The Dowells agree and encourage the Board to make a similar finding provided the agreement only contain the minimum requirements to maintain the property as outlined in the Dowells' Argument on Appeal.

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[3] For example, the Kuhns cannot collaterally attack Condition of Approval #2 in CU 80-22 which states that there must be a homeowners association or agreement assuring maintenance. Even if the County erred in imposing that condition, the time for appeal has long passed. Similarly, the Dowell setback issue has been conclusively decided by LUBA.

[4] As long as the elements of Collateral Estoppel are met in those Decisions.

[5] Kuhns argue that the Dowells could withdraw this appeal and that would end or limit the Kuhns' venue to be heard. The Kuhns have put themselves in that position because they chose not to appeal the Hearings Officer's decision.

XII. KUHN'S DESIRED RELIEF

The relief cited on page 13 of the "Kuhn Legal Opinion" is plainly beyond the authority of the BOCC. The County cannot give the Kuhns unilateral authority over the cluster development or the ability to determine whether the Dowells can continue to own their property. Similarly, the County cannot revoke vested property rights tied to previous land use decisions.[6] The Dowells do not see a need for the County to invest resources in launching an investigation or hiring an ombudsman. As evidenced by the Kuhns continued attempts to attack the results of prior court rulings, the Dowells have no reason to believe the Kuhns would actually honor the findings of a neutral arbiter. The Dowells are open to the County purchasing their interest in the cluster development if the County should be so interested.

XIII. FILL

Kuhn provides no authority as to why the fill allegedly depicted in one of his exhibits submitted January 27, 2016 is illegal. Setbacks apply to structures and the County largely does not regulate grading outside of wetlands or waterways. Moreover, this is not relevant to the question before the Board.[7]

XIV. FEBRUARY 8, 1976 AGREEMENT

This agreement appears to be personal to the parties as there are no legal descriptions provided or any indication that this agreement runs with the land. Even then, it does not say that the parties will forego open space uses permitted under PL-15 in lieu of converting all of these properties into a wildlife refuge. That was clearly Mr. Barton's understanding given the open space uses he intended for the Open Space Parcel. Accordingly, it does not hold or support a finding that the only permitted use of the Open Space Parcel is for wildlife habitat.

XV. COMMON PROPERTY

The letter denying Mr. Barton's partition dating February 6, 1980 erroneously states that the Open Space Parcel must be held in common. As is outlined in Applicant's Notice of Appeal and Argument on Appeal, PL-15 imposed an open space requirement not a common property ownership requirement. In any event, this letter is guidance on a contemplated future application and is not a final decision or otherwise binding. Even if it were, it does not indicate that the Open Space Parcel must be held commonly in perpetuity. Accordingly, the Board is free to determine that the Open Space Parcel may be conveyed separately from the residential parcels. Such a determination is critical for the parties to broker a settlement to this dispute.

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[6] The Dowells have an approved dwelling pursuant to LM-92-9 with a final building permit #b-34821. Exhibits A-12 and A-13 show they obtained an extension to the LM-92-9 Landscape Management permit and that planning approved the house to be built in phases. Dowells intended to complete the house, but the prolonged legal actions with the Kuhns have prohibited them from doing so. Kuhns have asserted that the drawings in the "Kuhn Legal Opinon" were submitted to planning, but have not provided any evidence that they actually were submitted by the Dowells. Regardless, that issue is irrelevant to this Declaratory Ruling request.

[7] Similarly irrelevant and unfounded, the Dowells have never blown weed clippings off of the Dowell Parcel.

XVI. ALLEGATIONS OF CRIMINAL ACTIONS

The Dowells vehemently deny engaging in any criminal actions against the Kuhns. The reason the Sheriff's department and the County District Attorney have not charged Mr. Dowell with criminal harassment or conspiring with others is because he has not taken any such actions and there is no basis to charge him with any crime.

XVII. RECORD CLOSING

The Dowells object to any and all documents, conversations, and materials submitted after the closing of the record.

SUBMITTED this 3rd day of February, 2016

BRYANT, LOVLIEN & JARVIS, P.C.

By: _____
SHARON R. SMITH, OSB#862920
GARRETT CHROSTEK, OSB#122965
Of Attorneys for Applicants

DESCHUTES COUNTY

Community Development Department

Administration Bldg., 1130 N.W. Harriman, Bend, Oregon 97701
(503) 388-6575
Planning Division
Building Safety Division
Environmental Health Division

February 3, 1995

Jeff Dowell
422 Lakeshore Drive
Hilton, NY 14468

RE: Building Permit status, File #LM-92-9.

Dear Mr. Dowell:

You have requested by letter, dated December 15, 1994 regarding the status of your building permit on the subject property located at 65595 Sisemore Road. In review of County records, you received Landscape Management permit approval via File #LM-92-9, and by extension via File #E-92-68. The conditions of approval required you to submit a building permit for the residence by March 21, 1994. A building permit (#B-34821) was applied for on March 18, 1994 in a timely manner.

Enclosed is a copy of notations with respect to the status of your building permit. Staff has noted that the residence will be built in phases with the garage portion and living space as phase I, considered to be the residence at this time for land use purposes.

Please be advised that timely progress must be made with respect to your building permit (#B-34821). If for any reason this building permit expires, your land use permit will be void. If there are substantial alterations to the submitted plans, a new land use application may be required.

Please keep in contact with the Deschutes County Building Division for the necessary requirements to ensure your building permit remains active.

If you should have any further questions, please call me at 388-6575.

Sincerely,
DESCHUTES COUNTY PLANNING DIVISION

Brian J. Harrington, Assistant Planner

BJH:slr

cc: Dennis Perkins, Building Official

FEB 1995
MAILED
DESCHUTES
COUNTY

Quality Services Performed with Pride

EXHIBIT A-12
1 of 1

Deschutes County Property Information

Building Permit details for account #163466

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

Account Information

Mailing Name: DOWELL,JEFF & PAT
Map and Taxlot: 1611190000100
Account: 163466
Situs Address: 65595 SISEMORE RD, BEND, OR 97703
Tax Status: Assessable

Warning

This account may have potential additional tax liabilities, taxes due, or other special development conditions.

Building Permit Details

Permit Number: 247-B34821
Permit Name: DOWELL,JEFF & PAM
Contractor Name: FRANKANSONS CONSTRUCTION CO
Application Date: 03/18/1994
Issue Date: 07/22/1994
Final Date: 02/11/1997
Status: Finaled

Building Classification: Residential
Class of Work: New Construction
Building Use: RESIDENCE
Square Feet: 375
Bedrooms: 4
Stories: 1
On Sewer: N
Permit Valuation: $29,723

Inspections

Date: 02/11/1997
Initials: SEF
Comments: *FINAL APPROVED

Date: 02/10/1997
Initials: SEF
Comments: GC:FINAL CANCELLED BY CONTRACTOR.

Date: 02/05/1997
Initials: SEF
Comments: INSPECTION NOTICE: FINAL DENIED. 1. POST ADDRESS AT DRIVEWAY. 2. COMPLETE CONFORM BLOCK PROTECTION/COVER. 3. COMPLETE BACKFILL. MAINTAIN MIN. 18" COVER. 4. PROVIDE HANDRAIL AT STAIRS. 5. WINDOW IN SHOWER REQ'D TO BE TEMPERED. 6. INSULATE U/F ACCESS.

Date: 12/16/1996
Initials: SEF
Comments: DRYWALL NAILING APPROVED

Date: 12/10/1996
Initials: SEF
Comments: FRAMING/INSUL APPROVED

Date: 12/03/1996
Initials: SEF
Comments: FRAMING DENIED. PROVIDE TRUSS ENGINEERING *OK TO INSULATE*

Date: 09/24/1996
Initials: SEF
Comments: PROGRESS-WALLS FRAMED, NO ROOF

Date: 04/16/1996
Initials: LEL
Comments: 180 DAY EXTENSION GRANTED

Date: 10/24/1995
Initials: SEF
Comments: CORRECTION NOTICE:PROGRESS-GARAGE SLAB DONE, U/F FRAMING COVERED W/O INSP. REQUIRED TO PROVIDE ACCESS TO U/F AT FRAMING INSP.

Date: 10/23/1995
Initials: MAS
Comments: GC PLANS PICKED UP

Date: 10/11/1995
Initials: CEW
Comments: GC - REVISED FLOOR PLAN, GARAGE W/ SMALL LIVING QUARTERS IN REAR. ORIGINAL DWELLING TO BE ADDED LATER W/ NEW PERMITS. REVISED FLOOR PLAN, R-3, 375 SF X 51.00 = 19,125.00 / M-1, 576 SF X 18.40 = 10,598.00

Date: 02/02/1995
Initials: STS
Comments: GC-PER BRIAN IN PLANNING--ENTIRE RESIDENCE WAS APPROVED BY BOTH PLANS EXAMINER AND PLANNING DEPT. OWNER WILL BE BUILDING PHASE I, WHICH WILL INCLUDE A GARAGE & APARTMENT. WHEN REMAINDER OF RESIDENCE IS BUILT, OWNER MUST REMOVE KITCHEN AS PER ABOVE COMMENT

Date: 12/29/1994
Initials: SEF
Comments: GUEST ROOM/GARAGE FOOTING APPROVED.

Date: 12/28/1994
Initials: LRP
Comments: FOOTINGS DENIED: BE MORE SPECIFIC AS TO WHICH PORTION OF THE PLAN YOU ARE BLDG.

Date: 12/28/1994
Initials: RAK
Comments: CANCELED BY CALL FROM OWNER

Date: 03/18/1994
Initials: JKH
Comments: **NOTE THAT THE KITCHEN IN THE GUEST ROOM WILL HAVE TO BE REMOVED PRIOR TO THE FINAL ON THE HOME BEING APPROVED PER PLANNING**

Date: 03/18/1994
Initials: JKH
Comments: 531 X 16.00 = 8496.00 2721 X 63.60 = 173055.60 TOTAL/181551.60

Date: 03/18/1994
Initials: JKH
Comments: PLANNING TO SIGN OFF ON CU-80-22 AND LM-92-9

BEFORE THE DESCHUTES COUNTY COMMUNITY DEVELOPMENT DEPARTMENT

DR-13-16 **As modified by** **MA-14-1**	)))))	**THIRD SUPPLEMENTAL ARGUMENT ON APPEAL (FINAL ARGUMENT)**

APPLICANT/OWNER: Jeff and Patti Dowell
c/o Bryant, Lovlien & Jarvis, P.C.
591 SW Mill View Way
Bend, Oregon 97702

ATTORNEY: Sharon R. Smith
Bryant, Lovlien & Jarvis, P.C.
591 SW Mill View Way
Bend, Oregon 97702

LOCATION: 65595 Sisemore Road, Bend, OR 97701
Tax Map: 16-11-19, Tax Lots 100, 300,
Deschutes County, Oregon.

REQUEST: Declaratory Ruling for an interpretation of the requirements (specific provisions, required signatures, and any other considerations) necessary to satisfy Condition of Approval #2 of CU-80-02, which mandates an 'acceptable written agreement' prior to the sale of any lot in the cluster development established by CU-80-02.

I. PURPOSE

The purpose of this Third Supplemental Argument on Appeal is to provide final argument in support of the Commissioners declaring that the Hearings Officer's decision was in error because it erroneously (1) sought to impose open space requirements into the maintenance agreement (2) concluded that the Open Space Parcel is dedicated exclusively to wildlife habitat, (3) determined that the required maintenance agreement must be signed by both the Dowells and the Kuhns, and (4) decided that the interests in the Open Space Parcel cannot be severed from the Kuhn and Dowell Parcels.

Dowells also ask the County Commissioners to declare what specific provisions are necessary to assure maintenance of the open space parcel, what form the agreement must take, who are the required signatories and any other considerations necessary to satisfy Condition of Approval #2 of CU-80-02.

II. BACKGROUND

The majority of the testimony provided in these proceedings, and in particular that from the Kuhns,[1] focused on things other than the question actually posed by this Declatory Ruling. It cannot be emphasized enough that such testimony is wholly irrelevant to the proceedings. Rather, the Board must focus on the question actually asked by this Declatory Ruling:

> What are the requirements (specific provisions, required signatures, and any other considerations) necessary to satisfy Condition of Approval #2 of CU-80-02, which mandates an 'acceptable written agreement' prior to the sale of any lot in the cluster development established by CU-80-02?

III. OPEN SPACE RESTRICTIONS

The Hearings Officer erroneously concluded that the required homeowner's association or maintenance agreement is the vehicle for preservation of open space values and therefore must include a provision describing how vegetation is to be maintained for wildlife habitat values (Condition of Approval #4(b)). In their Argument on Appeal, the Dowells set out how PL-15 imposes distinct "open space requirements" and "maintenance requirements" and how the Hearings Officer improperly melded the two.

While the County found that the Land Use Restrictions recorded against the properties did not satisfy the "maintenance requirements", the Land Use Restrictions do satisfy the "open space requirements." Accordingly, a condition of approval that effectively imposes additional "open space requirements" is not permissible. The Kuhns have presented no meaningful counter argument to this assignment of error other than incorrect assertions that the Open Space Parcel is dedicated exclusively to wildlife habitat (which is discussed further below).

The Board should remove Condition of Approval #4(b) and limit the scope of the required maintenance agreement 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 law.

IV. OPEN SPACE USES

The Hearings Officer erroneously concluded that the property must be maintained for wildlife habitat values (Condition of Approval #4(b) in Hearings Officer decision below). In their Argument on Appeal, the Dowells discussed the Hearings Officer's failure to recognize that open space uses permitted under PL-15 include a variety of uses beyond wildlife habitat. Moreover, the decision in CU-80-02 does not impose any condition limiting the Open Space Parcel exclusively to wildlife uses. In the Second Supplemental Argument on Appeal, the Dowells

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[1] The Kuhn Rebuttal is yet another example of the Kuhns' unwillingness to move towards resolution. Rather than address the relevant issues in this Declaratory Ruling, the Kuhns only seem interested in attacking the County and the Dowells. The Kuhn Rebuttal does not merit a response other than it reflects the Kuhns' distorted perception of past events and continued denial of issues that have been conclusively resolved against the Kuhns by unbiased tribunals.

provided further evidence that even the original developer did not contemplate dedicating the Open Space Parcel exclusively to wildlife habitat. Finally, a Board decision that the property can only be used for wildlife purposes, where such a condition was not included in the land use decision, would deny the property owners all viable economic use of the property and constitute a taking.

The only relevant argument submitted by the Kuhns is that the property is within the Tumalo winter deer range. That fact in and of itself does not signify that the Open Space Parcel is dedicated exclusively to wildlife habitat. This overlay does restrict uses, but is does not limit open space parcels within cluster developments exclusively to wildlife habitat and the Kuhns provide no authority for such an assertion.

The Board should remove all references in the Hearings Officer's decision limiting the use of the Open Space Parcel exclusively to wildlife habitat or that otherwise elevate wildlife habitat over permitted and co-equal open space uses.

V. REQUIRED SIGNATORIES

The Hearings Officer erroneously concluded that William and Martha Kuhns as well as the Dowells (the "parties") must execute the obligations of the original developer jointly, including jointly signing the homeowner's association or maintenance agreement (Conditions of Approval #1, 2, 3, 5, 6, and 7 in Hearings Officer decision below).

Condition of Approval #2 to the original Conditional Use approval, CU-80-02, requires:

> 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.

The plain text does not impose a requirement that the required agreement be between the owners of the two residential lots. It just needs to be a recorded agreement acceptable to the County. Furthermore, if the County finds that the Open Space Parcel can be conveyed separately from the residential parcels, which it should, an agreement between the owners would be unnecessary.[2]

The County should find that the required agreement need only be recorded against the Open Space Parcel and need not be signed by both the Dowells and the Kuhns. As the Open Space Parcel is a distinct unit of land, subsequent owners of the Open Space Parcel will be on notice of their obligations should they acquire an interest in the Open Space Parcel.[3] Moreover, it would be entirely appropriate for the required agreement to be between an owner of the Open Space

[2] Alternatively, Condition of Approval #2 to CU-80-02 would no longer be applicable if there were no common property.

[3] Recording against the residential parcels will only cloud title and be confusing if the subsequent purchaser does not also acquire an interest in the Open Space Parcel.

Parcel and the County to pay taxes and comply with applicable property maintenance laws (i.e. noxious vegetation and wildfire risk).[4]

VI. OWNERSHIP OF TAX LOT 300

The Hearings Officer's decision erroneously implies that the interests in TL 300 (Open Space Parcel) cannot be severed from the residential parcels. Specifically, the Hearings Officers concludes that the homeowner's association or maintenance agreement must be binding on all future owners of the cluster development parcels by being recorded against the residential parcels. As the Hearings Officer found, Section 1.030(21) of PL-15 does not require joint ownership of TL 300. Moreover, Condition #1 to CU-80-2 only requires that TL 300 be in joint ownership *prior to the sale of any lots*. That condition has been satisfied because TL 300 was placed in joint ownership prior to the sale of a lot and a lot has been sold. Finally, ORS 94.665 allows homeowner associations to convey common property, why should the Kuhns and Dowells not be afforded similar rights?

The Kuhns agree that ownership in the Open Space Parcel can be distinct from the residential parcels.[5] Moreover, conveyance of the Open Space Parcel is a valuable tool for potentially resolving disputes between the Kuhns and the Dowells. The Board should find that ownership of the Open Space Parcel can be conveyed separately from the ownership of the residential parcels.

VII. SUFFICIENT AGREEMENTS

The Dowells submitted two sample maintenance agreements that they would find acceptable.[6] One agreement addresses separate ownership of the Open Space Parcel and the other contemplates a joint-ownership scenario. The Board should find that the parties need not sign these particular agreements, but that the County would find either of these agreements acceptable should they be executed by the parties. Moreover, the Board should find that Condition of Approval #2 to CU-80-02 would be satisfied by an agreement between the County and an owner (but not necessarily both owners) of the Open Space Parcel that contains comparable provisions to the sample agreements.[7] This could be in the form of a Conditions of Approval Agreement, as identified by the Hearings Officer, commonly used by the planning department to assure property owner compliance with imposed conditions.

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[4] Kuhn appears to argue that insurance is a necessary element of the required agreement. Insurance is not necessary to keep the property compliant with applicable laws or otherwise maintain vacant land. Homeowner's insurance associated with the residential parcels adequately addresses issues with the Open Space Parcel. If the Board imposes an insurance requirement, the Board would have to determine the appropriate type and amount of insurance as they parties will likely never agree on those issues or how to allocate and use the proceeds of the required policy. The Board is not equipped to make such decisions and it is best to leave it to the individual parties to determine their own insurance needs.

[5] If the Kuhns acquire the Open Space Parcel, they could then record whatever wildlife related restrictions they so desired.

[6] The Kuhns have not provided an agreement that they find acceptable or otherwise suggested provisions they think appropriate. This is further evidence that the Kuhns are not actually seeking to find resolution to this decades-long dispute.

[7] Or state any additional provisions they deem necessary to meet the required condition of approval #2.

VIII. REOPENING THE HEARING

In the Kuhn Rebuttal filed Wednesday February 3, 2016, the Kuhns indicated that they would ask the County to "reopen the hearing." To date, the Dowells have not received a copy of any such request. In the event such a request is filed, the Dowells object to any re-hearing or further extension of the record. The Kuhns had a full opportunity to participate in the proceedings before both the Hearings Officer and the County Commissioners including an extended post-hearing open record period. Given the ample opportunity to participate, there is no reason to grant such a request and the rights of the Kuhns will not be prejudiced should the County deny the request.

IX. BIAS

At the public hearing before the Board, the Kuhns had an opportunity to challenge any of the Commissioners for conflict or bias. The Kuhns elected not to lodge any such challenge. Sweeping contentions of systematic bias against the Kuhns are not only inaccurate, but insufficient to invalidate present proceedings or otherwise demonstrate prejudice to substantial rights.

SUBMITTED this 10th day of February, 2016.

BRYANT, LOVLIEN & JARVIS, P.C.

By: _____
SHARON R. SMITH, OSB#862920
GARRETT CHROSTEK, OSB#122965
Of Attorneys for Applicants