**William John Kuhn**

**Martha Leigh Kuhn**

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

Thursday 11 March 2010

LCDC and the Local Officials Advisory Committee lisa.howard@state.or.us
635 Capitol St. NE, Suite 150 503-373-0050
Salem 97301-2540

Dear Lisa Howard, 503-373-0050 x271.

I find it ironic that Commissioner Luke who laughs at having to read the required statement prior to a public hearing regarding challenges for bias, prejudgment or personal interest has been appointed to the Land Conservation & Development Advisory Committee. Commissioner Luke, who at the February 22nd 2010 Board of Commissioners meeting, even asked Legal Counsel how to avoid reading the statement.

> **22.24.120. Hearings Procedure**.
> **H.** A form of preliminary statement incorporating the provisions of DCC 22.24.120 is set forth as Appendix A to DCC Title 22 for use by the Board of County Commissioners.

Commissioner Luke is the same County Commissioner who in 2000 along with Legal Counsel Rick Isham and Planning Director George Read conspired to defraud us of our right of enforcement of the maximum building line drawn on our final partition plat map. They claimed that because the map was never recorded that they would not enforce the provisions drawn on the map.

These same County personnel then continued to claim that the map could not be recorded and refused to aid us in getting it recorded.

Then in 2004 when we discovered ORS 92.025 which says that if the map isn't recorded we can't sell our property. We told the County either record the map as required or we won't have any reason to pay property tax. Why pay the tax if we can't sell our property?

And then once the map was recorded they still wouldn't enforce the provisions of the map.

Commissioner Luke does not deserve to be on the Land Conservation & Development Advisory Committee. Dennis Luke deserves to be reprimanded by the Land Conservation & Development Advisory Committee.

I would welcome the opportunity to speak before this board to present my case.

Sincerely,

William John Kuhn

William John Kuhn

EXHIBIT: 2 AGENDA ITEM: 2
LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: 3-18-10
PAGES: 20
SUBMITTED BY: William Kuhn

***William John Kuhn***

***Martha Leigh Kuhn***

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

Thursday 18 March 2010

LCDC and the Local Officials Advisory Committee
635 Capitol St. NE, Suite 150
Salem 97301-2540

lisa.howard@state.or.us
503-373-0050

We would like to speak to you about our concern regarding Mr. Dennis Luke's recent appointment to the LCDC Advisory Committee. We have had several personal experiences that cause us to believe that Mr. Luke does not have an adequate respect for either public input or the enforcement of land use laws in this community.

At the February 22nd 2010 Board of Commissioners meeting and acting as Chair, Commissioner Luke laughed at having to read and even asked legal Counsel how to avoid having to read the required "challenges for bias, prejudgment or personal interest" statement.

> **22.24.120. Hearings Procedure.**
> **H.** A form of preliminary statement incorporating the provisions of DCC 22.24.120 is set forth as Appendix A to DCC Title 22 for use by the Board of County Commissioners.

Our nightmare of dealings with Commissioner Luke and Deschutes County goes back over a decade. On the attached final partition plat map you will note two parallel building parcels along with a jointly owned common parcel which represents our complete cluster development within the Tumalo Winter Deer Range all of which is within a Forest Zone.

You will note the building sites are only 200 feet wide. This was the first error we discovered that was committed by Deschutes County in the creation of our cluster development. Building parcels in Forest Zones are required to have minimum side yard setbacks of 100 feet. One hundred feet on the left plus one hundred feet on the right equals zero feet for the house.

The result of our discovery – we asked for a lot line adjustment as a condition of our purchase agreement. – Granted.

Unfortunately we did not catch ALL of the other fifteen or so other errors made by Deschutes County. Some of these other errors included deed restrictions that weren't recorded, and no joint owners' agreement to cover the third parcel.

Because of a dispute with the other owner within the cluster we ended up in civil court. As a result of civil court we discovered that the final partition plat map wasn't recorded as required by law.

In 2000, County Commissioner Luke along with Legal Counsel Rick Isham and Planning Director George Read conspired to defraud us of our right of enforcement of the maximum building line drawn on our final partition plat map. They claimed that because the map was never recorded that they would not enforce the provisions drawn on the map.

These same County personnel then claimed that the map could not be recorded and refused to aid us in getting it recorded.

Then in 2004 when we discovered ORS 92.025 which says that if the map isn't recorded we can't sell our property, we told the County either record the map as required or we won't have any reason to pay property tax. Why pay the tax if we can't sell our property?

And then once the map was recorded they still wouldn't enforce the provisions of the map.

These are only a few examples of Commissioner Luke's riding roughshod over enforcement of land use laws. We are not the only ones to experience his sarcasm, bombast and mockery in public forums. But it has occurred often enough that it has been a hardship for us to speak out on any public issues during his tenure on the Board of County Commissioners. Especially since we have had land use issues before the Board ten times over the past ten years.

We believe Commissioner Luke's attitudes and cavalier way of dealing with land use issues and covering up County errors will not be an asset to the Land Conservation & Development Advisory Committee.

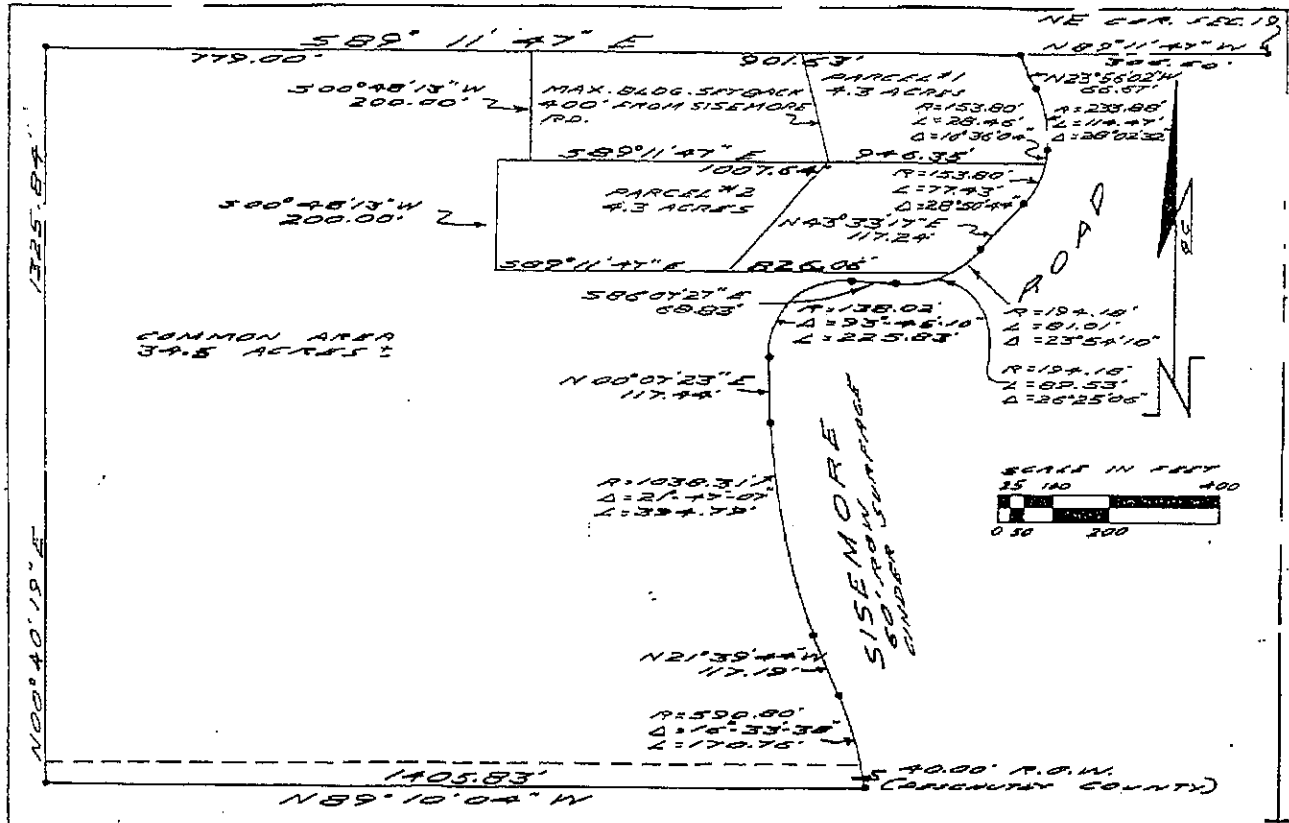
What we would like to see is a way or a means to deal with the capricious and arbitrary enforcement of land use laws and how Deschutes County enforces its land use process. You will notice from the attached that within days of our meeting with Commissioner Luke and George Read in August 2000 we submitted an appeal of their suppositional decision. We were denied the opportunity. As a result we have suffered a full decade of harassment, abuse, and assault.

We would welcome any opportunity to speak further before this board or to present additional testimony at any other forum available to us.

Thank you for your time,

William John Kuhn  Martha Leigh Kuhn

William John Kuhn  Martha Leigh Kuhn




BEARINGS ARE BASED ON PREVIOUS BY G. COLVIN.

REGISTERED PROFESSIONAL LAND SURVEYOR

George Colvin

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

DESCHUTES COUNTY PLANNING DEPARTMENT

APPROVALS:

| | |
|---|---|
| Edgar W. Graves<br>COUNTY SURVEYOR | 10/2/80<br>DATE |
| Albert A. Young<br>COUNTY COMMISSIONER | 11-12-80<br>DATE |
| Robert C. Pentland<br>COUNTY COMMISSIONER | 11-12-80<br>DATE |
| [illegible]<br>COUNTY COMMISSIONER | 11/12/80<br>DATE |
| John E. Anderson<br>COUNTY PLANNING DIRECTOR | 11-12-80<br>DATE |
| John K. Glover<br>COUNTY SANITARIAN | 11-12-80<br>DATE |

# County drops the ball on land partitions

**William and Leigh Kuhn**
*Bend*

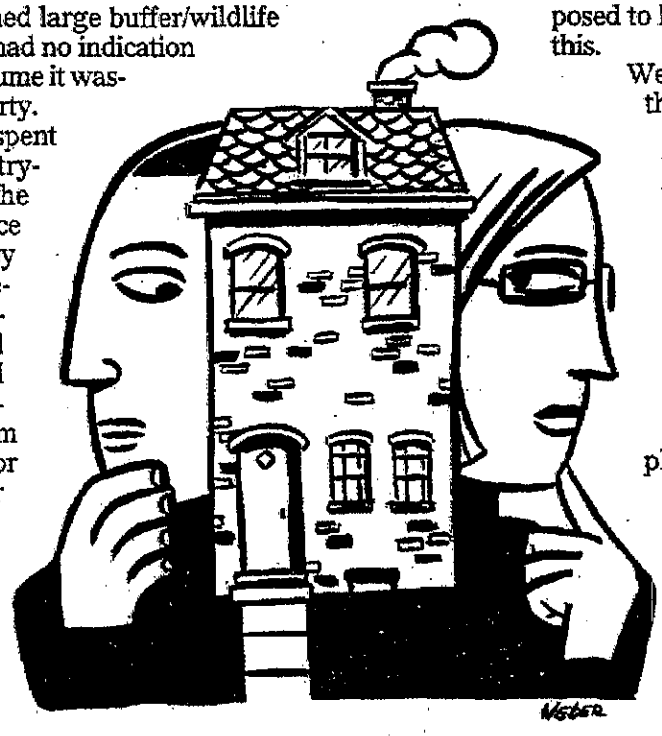
It could reasonably be argued that in this country it is a constitutional right for people to be safe in their homes. We are not, and have not been, for some time. Amazing as it must seem, we've been slandered, physically assaulted, our home and property repeatedly vandalized and threats made against our lives. When we leave, if no one is left at home, we always wonder what, if anything will be here when we get back, particularly at night.

The reason boils down to Deschutes County refusing to enforce county codes or the lines on our partition map, and the reason they have given for their refusal is that our minor partition map was not, is not, recorded with the county clerk.

At the time our partition was created, the county was required to have the director of planning responsible for filing approved partitions and plats with the clerk. Our minor partition was approved, had a conditional use approval, fees apparently paid, but no county official did the required last step.

Before we purchased in 1987, we dug into all the files the county had on this minor partition. We spoke to county planners and county legal counsel, saw a copy of the signed approved partition map, the conditional use approval, and the legal description at the assessor's office.

We examined and actually were very happy with all the restrictions, covenants, and requirements pertaining to this property, part of a cluster development of two building site parcels and one jointly-owned large buffer/wildlife use parcel. We had no indication or reason to assume it wasn't a legal property.



We've since spent lots of money trying to get the county to enforce its codes, money to validate required deed restrictions and put some kind of enforceability behind them on our minor partition cluster development. This costly effort came only after years of trying to gain voluntary compliance from the landowners of the other parcel, who had no interest in codes or restrictions, who live out-of-state (renting out their only current structure, a garage with attached kitchen and bathroom) and who weren't concerned with how we were affected by their actions.

We asked the county many times for help. A variety of reasons were given for why they wouldn't. Finally, in our expensive, last-ditch, civil case, the county announced it couldn't enforce codes or build lines because our minor partition final map wasn't recorded in the clerk's office, even though the county was supposed to have done this.

We looked in the clerk's office; no final map was recorded. We looked at the original files of other partitions and plats from 1979 to 1986. Virtually none of these partitions or plats were recorded, either. When we brought this up, we just got a lot of shrugged shoulders.

Recently, we've looked into this situation again, trying to understand what it meant for us. In our research, we found the relevant statute and county codes.

They aren't complicated. What they say, among other things, is we can't legally sell our property. What it may mean is mind boggling. Do we even own anything? Why have we been paying 17 years of property taxes? Does our parcel legally exist?

If nothing can be enforced on our partition, perhaps including our boundaries, does this mean no codes exist for our cluster development? Can permits be issued? Can land use decisions be heard? Who will enforce conditional uses? Can appeals be heard? Are all past permits and land use activity illegal? What do we do? How can we find out all the ramifications of not being recorded?

We had asked the county, using the requirements for the time our partition should have been recorded, to record our partition with the clerk. We were told no. Reason given: The original signers, former county commissioners, county engineer, etc. are no longer available.

We are asking again for the county to find a way to have our partition recorded to make our property salable, legal, and county code enforceable. This cannot be fixed with a suppositional statement by the commission or legal counsel. The final map needs to be physically recorded.

The story, the community issue, is the fact that other people are buying, living on, selling, and paying taxes on property that has never been recorded. Like ours, apparently. We have a rough estimate of how many partitions and plats we believe were not recorded. It's around 500. These people don't know about this problem, as we didn't. We want to change this by getting our story told.

---

**William and Leigh Kuhn** *have lived in Central Oregon for 18 years. Mr. Kuhn is an investment adviser. Mrs. Kuhn is a naturalist and an illustrator.*

Bend, Deschutes County, Oregon, Thursday, September 13, 1984

# Judge rules pot seized illegally

By Gene Barton
Bulletin Staff Writer

More than 500 marijuana plants with an estimated street value of $4 million were illegally seized in an August 1983 raid and cannot be used as evidence in a Tumalo man's trial, a Deschutes County Circuit court judge ruled Wednesday.

Judge Thomas Mosgrove said in the nine-page opinion that two overflights by Oregon State Police violated Francis Xavier Cibelli Jr.'s right to privacy.

A total of 545 high-grade marijuana plants were seized from a greenhouse and other areas at Cibelli's home at 65525 Sisemore Street on Aug. 25, 1983. The plants had been spotted in the partially concealed greenhouse from the air by two state police troopers on Aug. 10 and again on Aug. 25.

The property is off Couch Market Road, west of Tumalo.

"I believe the fact that the aircraft circled the greenhouse for over five minutes the first time and probably about 10 minutes the second time, when the avowed purpose was to observe for marijuana, are factors that must be considered..." Mosgrove said.

"I would find that the defendant had a subjective expectation of privacy from this kind of aerial search."

Mosgrove said several factors, including the fact that the officers flew over Cibelli's property at a height of 800 feet to 1,000 feet, contributed to his privacy invasion finding. But the judge also apparently made another distinction about the aspect of the private property in the case.

"... (S)ociety is "required to accept as reasonable an expectation of privacy where the property flown over is the residence and curtilage of defendant," Mosgrove wrote, "the surveillance was directed at the particular property, it was not an area of frequent overflights... and the contraband was not in view from a 'horizontal perspective (the ground)'."

Deputy District Attorney Ron Brown said earlier a decision against the state would be appealed.

Lt. Jim Forney, head of the OSP's marijuana eradication program, said the ruling won't immediately affect the program.

"Until the court says we can't, we're just going to continue doing what we're doing," Forney said.

Circuit court decisions do not set precedent.

Judge Rules Pot Seized Illegally .
The Bulletin - Sep 13, 1984
Street on Aug. 1983 The plants had been spotted in the partially concealed greenhouse from the air by two state police troopers on Aug. 10 and again on Aug. ...

http://www.google.com/url?sa=t&source=newspapers&ct=res&cd=8&url=http%3A%2F%2Fnews.google.com%2Fnewspapers%2Fp%2Fbendbulletin%3Fid%3Dt2cPAAAAIBAJ%26sjid%3DtYYDAAAAIBAJ%26pg%3D3507%2C1509901%26dq%3DCibelli%26hl%3Den&ei=b7iOS8OxHafCqwOl7t3EDQ&usg=AFQjCNELIVJ8YhvasrH0LqVFyGgwhdgKyQ

Judge Rules Pot Seized Illegally .
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Ruling On 'flyovers' Creates Few Waves .
The Bulletin - May 25, 1986
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State High Court Overturns Search Limits
The Bulletin - Nov 27, 1990
The case is similar to the Deschutes case in 1983 On Aug 10 and Aug 1983 Oregon State Police troopers flew over the Tumalo property of Fran cis Cibelli Jr ...

# Ruling on 'flyovers' creates few waves

By Gene Barton
Bulletin Staff Writer

A U.S. Supreme Court decision earlier this week upholding the constitutionality of police flyovers for detecting marijuana patches may have little effect in Oregon.

Such flyovers of public and open lands in the Willamette Valley are a crucial element of the Oregon State Police's marijuana eradication program. Oregon Supreme Court decisions have supported such flyovers.

But it is not yet clear whether the U.S. court's decision would have validated a Deschutes County case thrown out by a circuit judge in 1984.

The local case involved a Tumalo man, Francis X. Cibelli Jr., who was charged in August 1983 with cultivating marijuana in a greenhouse behind his home. Police circling in an airplane over his property spotted the greenery. Then, armed with a search warrant obtained on the basis of the aerial sighting, they seized 545 high-grade marijuana plants.

Judge Thomas Mosgrove ruled that the search was illegal on the ground that the plane circling over Cibelli's house violated his right to privacy.

Stephen Peifer, an assistant attorney general in the appellate division, said the Cibelli decision was not appealed so as not to jeopardize earlier precedents.

"As the law stands now, it's perfectly legal for the police to fly over property and observe whatever is in plain view down below," Peifer said.

In earlier rulings, courts had upheld the conducting of aerial surveillance by means of point-to-point flights, but not circling.

"We were concerned that that (Cibelli) case might be used to take away police authority," Peifer said.

Although Peifer said he hadn't read the Supreme Court's latest decision, which is the first in which it has explicitly approved flyovers of homes and adjacent areas such as back yards, he said it would be "helpful" if it did address flight patterns.

Peifer said he expects a test case in Oregon relatively soon, although none are pending.

"What the U.S. Supreme Court does is almost create a challenge to some judges to create a different rule. It might be helpful and it might not," he said.

Bend lawyer Steve Tiktin, who won the ruling in the Cibelli case, called the high court's decision "unfortunate."

"It seems to me that the U.S. Supreme Court is endorsing invasions of privacy in an area that has traditionally received special protection from the courts," Tiktin said.

"Frankly, I think it's a tragic step in the wrong direction. As the police and technology become more and more sophisticated, I'm wondering if there will be any limit to invading one's privacy without a warrant."

## BIA investigator accepts new job

WARM SPRINGS — Jerome Main, criminal investigator with the Bureau of Indian Affairs in Warm Springs since 1982, has resigned to accept a similar post in Montana.

Main will be in charge of investigations for seven Indian reservations in Montana and one in Wyoming. His headquarters will be the BIA area office in Billings, Mont.

THE BULLETIN C-5
Bend, Ore., for Sunday, May 25, 1986

Ruling On 'flyovers' Creates Few Waves .
The Bulletin - May 25, 1986
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http://www.google.com/url?sa=t&source=newspapers&ct=res&cd=5&url=http%3A%2F%2Fnews.google.com%2Fnewspapers%2Fp%2Fbendbulletin%3Fid%3D12gPAAAAIBAJ%26sjid%3DuIYDAAAAIBAJ%26pg%3D5479%2C1967568%26dq%3DCibelli%26hl%3Den&ei=b7iOS8OxHafCqwOl7t3EDQ&usg=AFQjCNEW2h7Q2WT3Q7Gx3p47AtXCCq2bdg

# State high court overturns search limits

*From staff and wire reports*

The Oregon Supreme Court Monday reversed two Oregon Court of Appeal rulings that had clamped additional restrictions on police searches.

Ironically, a similar decision in Deschutes County in 1983 would have been overturned under the new ruling. The Deschutes County Circuit Court decision was not appealed, however.

The supreme court said police can use airplanes to look for illegal drugs without getting search warrants and that officers in another case were justified in breaking down a door without first announcing their presence.

Both supreme court rulings were unanimous.

A case from Jackson County involved appeals by John Ainsworth, who was convicted of manufacturing and possessing marijuana, and his wife, Cheryl Ainsworth, convicted of possessing marijuana.

See next page for continuation.

and seized the plants.

The Oregon Court of Appeals, in 6-4 decision last year, said the convictions had to be reversed because the officers made an illegal search from the plane.

The supreme court unanimously disagreed, saying the aerial observation didn't violate the defendants' constitutional protection against unreasonable searches.

Because there is no evidence the deputies violated any rights of defendants or other legal restrictions, the court said in an opinion by Justice Wallace Carson Jr., "they lawfully were in the air above defendants' land.

"We hold that a police officers' unaided observation, purposive or not, from a lawful vantage point is not a search" under the state constitution, Carson said.

The Ainsworth case is similar to the Deschutes case in 1983.

On Aug. 10 and Aug. 25, 1983, Oregon State Police troopers flew over the Tumalo property of Fran-

partially concealed greenhouse. An Aug. 25 raid netted 645 high-grade plants with an estimated street value of $4 million.

The case was thrown out a year later, however, when Deschutes County Circuit Court Judge Thomas Mosgrove ruled that the overflights were an unconstitutional invasion of privacy.

Mosgrove's ruling, as is the case with circuit court decisions, set no precedent. But the attorney general's office elected in April 1985 not to appeal the case to the Court of Appeals for fear of establishing a bad precedent.

"It is the universal conclusion that taking this case up on appeal could make bad law," Maria Rae, administrative assistant to Attorney General Dave Frohnmayer, said in 1985. "We don't want to put all overflights at risk."

In Monday's other case, this one from Lane County, Charles Ford was convicted of illegal drug possession after police broke down

The appeals court, in a 7-3 ruling, said officers didn't comply with a law that says police first must announce their presence and be refused voluntary admission before using force to enter premises.

But the supreme court said the police action in this case came within a traditional "apprehension of peril" exception to the law.

Police had information that Ford, a convicted drug offender with an extensive criminal record, had several concealable firearms and had arrest warrants outstanding.

The circumstances at the time of the unannounced entry "would lead a reasonable person to believe that compliance with the knock and announce requirements ... would create a risk to the entering officers' safety," the court said.

REDMOND

State High Court Overturns Search Limits

The Bulletin - Nov 27, 1990

The case is similar to the Deschutes case in 1983 On Aug 10 and Aug 1983 Oregon State Police troopers flew over the Tumalo property of Francis Cibelli Jr ...

Both supreme court rulings were unanimous.

A case from Jackson County involved appeals by John Ainsworth, who was convicted of manufacturing and possessing marijuana, and his wife, Cheryl Ainsworth, convicted of possessing marijuana.

They lived on 14 acres in a rural area of the county and their land was posted against trespassers.

Sheriff's officers acting on a tip on Sept. 10, 1985, flew over the property in a helicopter and saw marijuana plants growing.

Based on their observations, the deputies obtained search warrants

## Rahmsdorff elected

Bend's Terry Rahmsdorff has been elected to the Oregon School Boards Association board of directors as a representative from the state's 2nd Congressional District.

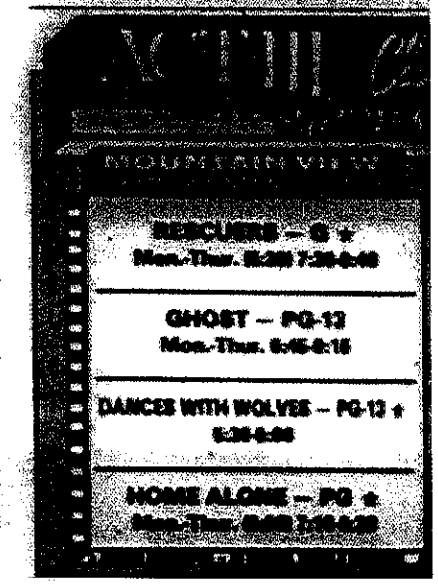
Rahmsdorff is a member of the Bend-LaPine school board.

The association provides legislative representation and a variety of training and informational services to school boards across the state.

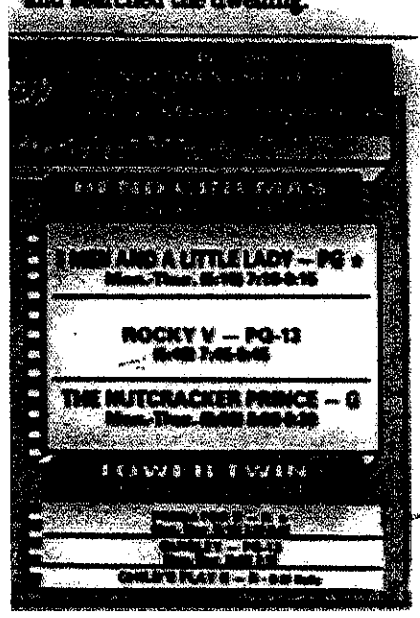
unaided observation, purposive or not, from a lawful vantage point is not a search" under the state constitution, Carson said.

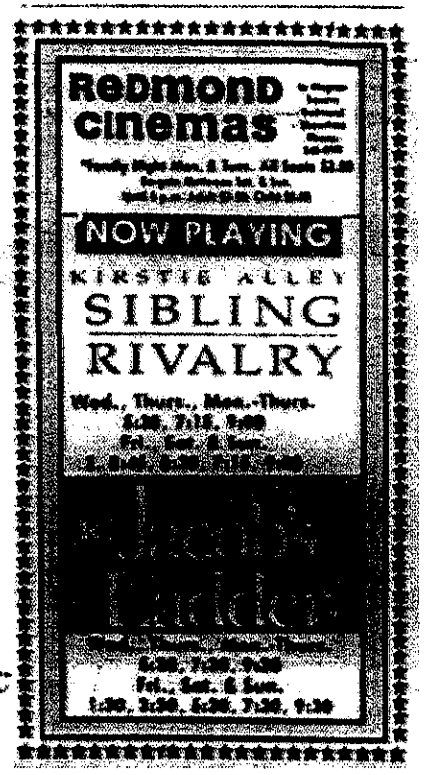
The Ainsworth case is similar to the Deschutes case in 1983.

On Aug. 10 and Aug. 25, 1983, Oregon State Police troopers flew over the Tumalo property of Francis Xavier Cibelli Jr. and spotted marijuana plants growing in a




In Monday's other case, this one from Lane County, Charles Ford was convicted of illegal drug possession after police broke down the door of his Eugene apartment and searched the dwelling.




# News of Record:

Published: August 25, 2008 4:00AM PST

**Civil Suits**

**Deschutes County Circuit Court Civil Log**

Cases involving less than $50,000 are subject to mandatory arbitration

**Filed Aug. 15 Case No. 08CV0668MA;** Cibelli's Inc. v. Brandon Banner, Edward Barbeau and Pisano's LLC, complaint, $60,000

## William John Kuhn

**From:** "William John Kuhn" <William@RiskFactor.com>
**To:** "Dennis Luke" <DennisL@co.deschutes.or.us>
**Sent:** Monday, July 03, 2000 8:56 AM
**Attach:** LukeDennis_00g1_400.PDF
**Subject:** Re: CDD's Process and Procedural errors

Good Morning Commissioner Luke,
I have attached our letter regarding process and procedural errors as a pdf file. If you are unable to open it I can easily attach it as a text document. Just let me know. We are available just about anytime this week. Please let us know when is convenient.
Thank you for your time,
Bill - 389 3676
William@RiskFactor.com

----- Original Message -----
**From:** Dennis Luke
**To:** 'William John Kuhn'
**Sent:** Friday 30 June 2000 11:35 AM
**Subject:** RE: CDD's Process and Procedural errors

I would like your issues in writing so I can better inform myself before we have a personal meeting. You can do that by e-mail if you like or write them out and mail them to me. Also if you have documentation please note what the documentation is but you do not have to include it until the meeting in person.

Dennis R. Luke
1130 NW Harriman
Bend, Oregon 97701
(541) 388-6568
dennisl@co.deschutes.or.us

-----Original Message-----
**From:** William John Kuhn [mailto:William@RiskFactor.com]
**Sent:** Thursday, June 29, 2000 1:42 PM
**To:** DesCo BoCC Luke Dennis
**Subject:** CDD's Process and Procedural errors

Dear Commissioner Luke.
Dennis,
This is not in reference to the TA from yesterday.
We have been trying to resolve some land use issues with our other neighbors.
Unfortunately they involve several (~15) process and procedural errors by CDD.
George Read and staff do not seem to be responding.
Linda suggested I talk to you first since you are the CDD liaison.
May I have 15-20 minutes?
Thank you,
Bill - 389 3676
William@RiskFactor.com

**William John Kuhn**

**Martha Leigh Kuhn**

PO Box 5996 Bend, Oregon 97708-5996

Phone: (541) 389-3676

Monday 3 July 2000

Dennis Luke, Commissioner
1130 NW Harriman
Bend, OR 97701

w 541 388 6570

Dear Commissioner Luke,

My wife and I are half owners in a rural cluster development subject to WA and LM overlays. Problems began occurring when the other owners built a garage/studio apartment on their lot with several serious code violations. We let these owners know of our concerns regarding these violations and the impact they have. When we received no cooperation we went to CDD. On the most serious violation, the setback of the structure and the cleared footprint for the future house, CDD's response was to do nothing and to tell us nothing could be done.

We met with George Read in late March to discuss the procedural and process errors made by his office and ways to correct them. We were very concerned with the process that DesCo CDD has followed in allowing decisions to be made regarding the Landscape Management Plan and the Building Permit. Established procedures were not followed. New applications were not demanded, and changes were allowed without required variances and public notification.

An official code violation complaint form was submitted in March. CDD Code Enforcement completed their investigation in mid May. Although we asked to be kept informed of the proceedings, and according to the Code Enforcement Manual we have a right to know, information seems to come only when we rattle the cage.

We don't know what CDD has decided to do about the setback violation. We believe investigated and proven code violations need to be corrected. The Code Enforcement Manual stresses the desire to see that codes are followed. To date this isn't the response we've gotten from dealings with CDD in 1997, or now, regarding the same violations.

We are hoping the Commission has the same concerns and can help us.

We have all the written communications with George Read outlining the process and procedural errors we believe occurred, and our Code Violation Complaint form with required explanation. We do have all the paperwork from the file for 65595 Sisemore Road including the complete LM-92-9. We also have the complete file for the MP-79-232 and the CU-80-22 from the formation of our cluster development. To give you a feel for the procedural and process errors that have been made I have attached a list with a brief explanation. We are prepared to review each and every item or talk just in general terms regarding the big picture.

Sincerely,

William John Kuhn  Martha Leigh Kuhn

## History:

In 1980 a conditional use and minor partition were granted for this cluster development within the newly created Tumalo Winter Deer Range. DesCo Code required both a Homeowners Association and Homeowners Agreement before the cluster could be formed. CDD staff in 1980 failed to include the requirement of both in the Staff Report submitted to Myer Avedovech the Hearings Officer. Myer Avedovech subsequently failed to include both in his Findings and Decision because CDD staff used the word ***either*** instead of ***both*** in their report. Since County Code requires both the association and agreement no further construction should take place until all County Code requirements are met by the current owners. The Wildlife Area overlay required all buildings to be within a 400' maximum setback from the road to protect as much of the deer habitat as possible.

In 1992 the owners of Tax Lot 100, 65595 Sisemore Road applied for and were granted a Landscape Management plan as required within the Wildlife Area and Landscape Management Overlays. The WA required construction within 400' of the road. The LM required the applicant to stipulate size, shape, material, and appearance of the structure.

Before, during, and even after the LM application process there were numerous communications regarding the 400' setback.

The 400' setback was ignored and DesCo CDD never inspected the site for the setback, relying instead on the integrity of the owner and builder.

Because of a disagreement over the no-dog deed restriction we investigated the history of the 1980 Minor Partition and Conditional Use permit in January 1997. We brought to the attention of DesCo CDD that the structure was more than the required 400' setback in a January 1997 meeting with Brian Harrington and Dennis Perkins. We were told that there was nothing that could be done about it. **We later found out that this was not a true statement.** Had we been told the truth we could have asked CDD to stop any further activity on the construction at the site in January 1997. They in effect prevented us from having the issue settled in 1997 when we discovered the problem.

In late 1999 we asked for a Declaratory Ruling in Civil Court regarding the no-dog deed restriction. In the process of gathering information for our case we painstakingly went through all files regarding the LM for 65595 Sisemore Road and discovered the process that CDD required was violated in several instances. We brought our concerns to the attention of George Read who has summarily dismissed our concerns. We believe he will continue to ignore CDD's procedural errors and not enforce the codes regarding the Dowells' building and our clustered property.

**Procedural Errors (PE) were made by the County beginning with the original CU and MP in 1980.**

PE 1 19800325 The CDD Staff report that went to the Hearings Officer used the word 'or' instead of the word 'and' in the following sentence. "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." This was a procedural error because DesCo required both, not one or the other.

PE 2 19800513 CDD did not require the association **and** agreements before the completion of the CU and MP process. DesCo would have no way of requiring either after the CU and MP were granted.

PE 3 19881114 CDD accepted our Deed Restrictions as an 'acceptable' agreement when Kuhns applied for their LM. This was a procedural error because the deed restrictions did not address how taxes would be paid, etc. and therefore could not be considered 'acceptable'. There is no reference in County Code that defines what 'acceptable' means.

PE 4 19920310 CDD accepted the 1990 sale contract as an 'acceptable' agreement when Dowells applied for their LM. This was a procedural error because the contract did not address how taxes would be paid, etc. and therefore could not be considered 'acceptable'.

PE 5 19920830 CDD did nothing when the size of the planned building doubled in size from the LM specks without requiring a new LM application. The LM-92-9 letter of approval from CDD reads, "Approval is based upon the submitted plan. Any substantial change in the plan will require a new application."

PE 6 19940223 CDD did not require a new application or even a variance when the design, style, appearance, and size of proposed structure was changed dramatically when new plans were submitted.

PE 7 19940722 CDD approved a building permit for Phase I but did not take into consideration the law change and that Phase II would then be outside of the new 300' setback requirements when it would be built.

PE 8 19941115 Allowing a structure to be built that in no way conformed to the original LM-92-9 Findings and Decision. Chapter 18.124.030 D – "Noncompliance with a final approved site plan shall be a zoning ordinance violation."

PE 9 19941229 CDD did not inspect the 400' setback when the foundation was approved. CDD relied on the self governance of the owner and builder.

PE 10 1994-1997 Sometime during this time the setback was changed on County records from 400' to 455' without a variance. Any change of greater than 10% requires a variance. NOTE: The actual building has a setback of more than 550'. We don't know when the change took place because there is no record of the change. Maybe that should be considered an additional procedural error. Chapter 18.132.025 Minor Variances – "A variance seeking to depart from on-site requirements of this title, such as setbacks and area requirements, by no

greater than 10 percent of the required distance or area may be granted by the Planning Director or Hearings Body…" The variance was greater than 10% and there is no record of a variance.

PE 11 1994-1997 CDD allowed the change in setback without notifying neighbors of the change.

PE 12 19950202 CDD approved the entire residence including both Phase I and Phase II even though no new plan was submitted as required. "Any substantial change in the plan will require a new application." [19920310 Approval letter for the LM-92-9]

PE 13 19970128 CDD told the Kuhns there was nothing that could be done about the 400' setback violation when they pointed it out to Kevin Harrison and Dennis Perkins in the meeting on 28 January 1997 prior to final inspection. We now know that this was not true.

PE 14 19970128 CDD did nothing to rectify the 400' setback error once they knew about it.

PE 15 19970211 CDD allowed a final inspection on the garage/studio apartment even though they knew about the error in the setback.

PE 16 20000516 CDD Code Enforcement Officer estimated the offset to be 370' from Sisemore Road. When BJ Johnson and Cindy (a temporary staffer) from CDD came out to inspect the property regarding the code complaint I met them in front of our neighbors' property. We walked the boundary between our properties and measured the 448' feet back from Sisemore to the survey pin that is the junction between TL#100, TL#200, and TL#300. While standing at this survey pin we were able to look at the **front** of the garage/studio apartment. Clearly this structure is far beyond the 400' maximum setback. We then continued walking another 100' until we were able to see the backside of the structure.

*William John Kuhn*

*Martha Leigh Kuhn*

PO Box 5996 Bend, Oregon 97708-5996

Phone: (541) 389-3676

Thursday 17 August 2000

Dennis Luke, Commissioner
1130 NW Harriman
Bend, OR 97701

w 541 388 6570

Dear Commissioner Luke,

Five code violations against our neighbors were filed on 23 March 2000 after we learned that our neighbors had submitted documents to the court that contained false statements in our Request for Declaratory Relief regarding the interpretation of deed restrictions. We went to court after our neighbors quit mediation after trying for 2½ years to resolve the issue. Our neighbors lost the court case because they refused to accept the restrictions. They also selfishly and incorrectly interpreted code restrictions in constructing a garage/studio-apartment on their property.

Community Development Director, George Read, in an attempt to make the code violations go away and to cover his and his departments mistakes over the past twenty years has now made a verbal decision that specifically contradicts what the County Commission has directed. Before this issue goes any further and before Mr. Read puts his decision in writing, we feel it imperative to call to your attention his recent acts.

Based on evidence we have from previous communications with CDD we believe Director Read may have made an illegal land use decision in our meeting on Wednesday 9 August 2000. If you are endorsing Mr. Read's interpretation then we require his interpretation regarding the 400-foot measurement put in writing. If you disagree with Mr. Read's interpretation then we require a written statement either from you, the Commission, or from Mr. Read as Director of CDD, refuting his interpretation.

Mr. Read made a judgment decision, which requires prior public notice. Since our property is the property over which the distance was measured and our property is materially affected by this decision we should have been noticed prior to the decision he made.

Chapter 22.40 – Declaratory Rulings outlines a process for making such decisions and Mr. Read did not follow that process. "Interpreting a provision of the comprehensive plan or ordinance (and other documents incorporated by reference) in which there is doubt or a dispute as to its meaning or application." In the case of how the 400' setback was to be measured there was no doubt. The Commissioners and the former head of the Planning Department all signed their names as to how it was to be measured.

Since this is a land use decision it is also subject to appeal.

Attached are Exhibits:

Exhibit "A" is a map originally created by Surveyor, George Colvin in December 1979 as part of the Minor Land Partition MP-79-232 process for John E. Barton. This is the survey map with the signatures of all three Commissioners, the County Surveyor, the County Sanitarian, and the Then County Planning Director, John E. Anderson. Please see the note inside Parcel #1, which reads, "Max. Bldg. Setback 400' From Sisemore Rd." This map clearly shows a line drawn that is **perpendicular to** the property lines as they meet the **right-of-way** for this parcel. Since **the Planning Director and all Three Commissioners signed this map** it is the legal and official interpretation of the County. There has been no other ordinance or declaratory ruling that contradicts this legal document. Mr. Read referenced Chapter 18.88.060 B in his argument as to how to measure from the road. Section B came into effect under Ordinance # 92-042. (See Exhibit "D".) If he insists on using code that came into existence after the LM, he must then also use **the entire** new wording of the new code, which stipulates being within 300 feet of the road. He can not have it both ways. Mr. Read is comparing apples with oranges.

Exhibit "B" is a communication from Denyse McGriff, staff person in CDD, dated June 1987. This document clearly shows that County Development interpreted the 400' maximum **setback from the FRONT property line**, and not across someone else's property as Mr. Read alleged in our meeting on Wednesday.

If Mr. Read puts his decision in writing he will have committed process and procedural errors 17 and 18 regarding the 65595 Sisemore Road file. Error 17 is making a land use decision in order to please a developer's lawyer in some backroom without a formal hearing. And Error 18 is contradicting the direct decision of three commissioners without first communicating his intent to the County Commission and going through the proper procedure.

Please note that when there is a pending issue, in this case the 400' setback code violation, before a body, you cannot make an arbitrary decision to change how to interpret the evidence that is contrary to how it was interpreted in the past.

Mr. Read in the year 2000 has made a unilateral decision to change the 1980 interpretation of the County Commission. In approving the survey map with the 400' setback drawn as it was shows how the Commission and the Planning Department was to interpret the distance from the road. The method of interpretation that Mr. Read is now trying to impose uses an ordinance that was not in evidence in 1992. If Mr. Read's method of interpretation is to be accepted then the 300' setback rule must also apply. Again, Mr. Read is inappropriately comparing apples with oranges.

In early 1992 the only definition in County Code for Setback is that found in the Definition Section of Chapter 18.04. The definition for setbacks including front, rear, side and street side all include the concept of measuring from the front lot line, rear lot line, side lot line. There is no reference to being able to measure over another parcel. See Exhibit "C" Chapter 18.04.1095 through 18.04.1115 Definitions of Setback.

Over the past 3½ years we have asked for County help regarding the flagrant actions of the owners of the property next to us on numerous occasions only to be put-off, ignored, and lied to. We refuse to accept anymore illegal acts committed by either our neighbors or by County officials. We continue to be amazed at the treatment and attitude we have received as constituents of this county. Please stop protecting and defending illegal and unethical acts. This Commission has been openly biased for development, even in sensitive habitats. All we have ever asked for is for County Codes to be respected and honored. As a developer, Mr. Luke, we are disheartened that you did not catch the errors in Mr. Read's presentation on Wednesday. As our commissioner we are disappointed that you did not reprimand Mr. Read for his reckless interpretation of past commissioners decisions. To not even give us the courtesy of looking at the documents we presented was at best rude. We expect more of our elected officials.

Sincerely,

William John Kuhn Martha Leigh Kuhn

C. E. "Win" Francis

Gerald A. Martin

**FRANCIS & MARTIN, LLP**
Attorneys at Law
1199 NW Wall Street
Bend, Oregon 97701-1934

(541) 389-5010

LaPine Office
(541) 536-3731

Facsimile
(541) 382-7068

COPY

December 12, 2001

Liz Fancher
25 NW Minnesota Avenue
Bend, OR 97701

**HAND-DELIVERED**

Re: Kuhn v. Dowell
Deschutes County Circuit Court Case No. 01-CV-0233-MA
Our File No. 01-037

Dear Liz:

The purpose of this letter is to disclose a meeting, which I attended on August 9, 2000 with my clients Bill and Leigh Kuhn. They scheduled a meeting with Commissioner Dennis Luke and asked that I attend.

We arrived at the County offices and after waiting a few minutes Commissioner Luke appeared accompanied by George Read. At that time, either George Read or Dennis Luke made the comment that they were not aware the Kuhns' attorney was going to be accompanying them. We proceeded to a conference room and George Read produced a diagram showing the Dowells' property and the Kuhns' property. The primary issue at that time was whether the Dowells' structure on their property was in violation of the 400-foot maximum setback from Sisemore Road.

The diagram had a line on it from the side or corner of the Dowell home across the side of their property diagonally to Sisemore Road showing that by measuring in such a manner the structure was within the 400-foot setback. The Kuhns questioned why that measure was appropriate rather than measuring from the structure to the front of the Dowells' property where it abutted Sisemore Road. George Read stated that was a proper way to measure the 400-foot maximum setback and Commissioner Luke nodded his head affirming that statement.

At the time of that meeting I had had little or no prior contact with Commissioner Luke or George Read. I was surprised by what seemed to be an adversarial or confrontational approach taken by both Commissioner Luke and George Read. I had anticipated a meeting with some exchange and discussion regarding the appropriate measurement for the 400-foot maximum

setback. Instead the meeting was quite short with George Read simply indicating that this is the way we measure it and Dennis Luke concurring. That meeting was the first occasion when anyone had suggested the diagonal measurement to Sisemore Road. The documents submitted to the County by the Dowells when they were seeking approval for the structure on their property showed the usual measurements from Sisemore Road at the front of their lot straight back and parallel with the sides of their lot.

If I can offer you any further information, please contact me.

Very truly yours,

Gerald A. Martin

GAM/grw

cc: William and Leigh Kuhn

RECEIVED
BY: Paul Blikstad

AUG 17 2000

DELIVERED BY:
William Kuhn

DESCHUTES COUNTY
PLANNING DIVISION
117 NW Lafayette Avenue, Bend OR 97701
Phone: (541)388-6575 FAX: (541)385-1764 http://newberry.deschutes.org

# APPEAL APPLICATION FORM

DATE SUBMITTED: 17 August 2000 FEE: 250.00

APPELLANT: William & Martha Kuhn PHONE: (541) 389 3676

MAILING ADDRESS: PO Box 5996 CITY: Bend ST: OR ZIP: 97708-5996

LAND USE APPLICATION BEING APPEALED: Method of Measuring Maximum Set Backs within WA Zone

PROPERTY DESCRIPTION: T 16 R 11 S 19 TAX LOT: 100

APPELLANT'S SIGNATURE William R. Kuhn Martha Kuhn DATE: 2000 08 17.4

**IT IS THE RESPONSIBILITY OF THE APPLICANT (APPELLANT) TO COMPLETE A NOTICE OF APPEAL AS SET FORTH IN CHAPTER 22.32 OF THE COUNTY CODE, "APPEALS."**

EVERY NOTICE OF APPEAL SHALL INCLUDE:

1. A statement describing the specific reasons for the appeal;
2. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons the Board should review the lower Hearings Body's;
3. If the Board of County Commissioners is the Hearings Body and de novo review is desired, a request for de novo review by the Board stating the reasons the Board should provide de novo review as provided in Section 22.32.030 of Title 22.

**The Notice of Appeal on the reverse side of this form must include the items listed above. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on the Notice of Appeal.**

**EXCEPT AS PROVIDED IN SECTION 22.32.040, APPELLANTS SHALL PROVIDE A COMPLETE TRANSCRIPT OF ANY HEARING APPEALED FROM, FROM RECORDED MAGNETIC TAPES PROVIDED BY THE PLANNING DIVISION UPON REQUEST (THERE IS A $5.00 FEE FOR EACH MAGNETIC TAPE RECORD). APPELLANTS SHALL SUBMIT TO THE PLANNING DIVISION THE TRANSCRIPT NO LATER THAN THE CLOSE OF THE DAY 5 DAYS PRIOR TO THE DATE SET FOR THE DE NOVO HEARING OR, IN ON-THE-RECORD APPEALS, THE DATE SET FOR RECEIPT OF WRITTEN RECORDS.**

Mr. Kuhn submitted a check of $250.00 for an appeal. However, since there is no underlying land use application, I cannot log this appeal into LUTS. I will be checking on this with George Read. Paul Blikstad 8-17-00

George Read

**From:** George Read [georger@co.deschutes.or.us]
**Sent:** Friday, August 18, 2000 10:45 AM
**To:** Luke, Dennis
**Cc:** Rick Isham
**Subject:** Fw: Kuhn Appeal and update

Dennis,

I am forwarding this for your information. Mr. Kuhn filed the appeal yesterday. It is nearly identical with what happened in the Yost case. We are returning is as it is not an appealable decision. Nevertheless, the issue raised by Mr. Kuhn at our meeting that the setback is on the original partition plat was a new issue not previously raised and might have merit. I am setting a meeting with Rick to discuss this.

If there is merit I believe we may want to bring the whole issue to the Board for a hearing. The issue being, if this is a violation of a setback on an unrecorded partition plat (we didn't record them prior to 1981) does the County want to enforce it? My theory is having the Board resolve the issue will end this continuing saga of hundreds of accusations. Thank you, George

----- Original Message -----
**From:** Tom Anderson <mailto:toma@co.deschutes.or.us>
**To:** George Read <mailto:georger@deschutes.org>
**Sent:** Friday, August 18, 2000 10:26 AM
**Subject:** FW: Appeal

-----Original Message-----
**From:** William John Kuhn [mailto:William@RiskFactor.com]
**Sent:** August 18, 2000 9:57 AM
**To:** DesCo CDD - Anderson Tom
**Subject:** Appeal

Tom,

Leigh and I wanted you to be aware of an appeal (of George Read's verbal statements made on 9 August in front of our attorney) we submitted yesterday, and a new code violation complaint we filed on Wednesday regarding the maximum setback for the Dowells' structure.

Since it is George Read that will look at this appeal and it is George Read who made the statement with Dennis Luke's blessing, we wanted some other 'high CDD staff member' to be aware of our actions.

We simply want to know if the structure is legal or not.

| | |
|---|---|
| **From:** | Merry Ann Moore |
| **To:** | lisa.howard@state.or.us |
| **Subject:** | Comments to LCDC re: Central Oregon and resorts |
| **Date:** | Thursday, March 18, 2010 8:18:06 AM |
| **Attachments:** | Deschutes PC resort remap recommendations.pdf<br>Sierra Club newsletter spring 2010 - destination resorts p. 3.pdf |
| **Importance:** | High |

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Dear Commissioners,

I am unable to attend in person this morning to testify on an important land use issue for Central Oregon. Please accept these written comments instead.

Deschutes County is currently revising its destination resort overlay map. The proposal recommended by our county Planning Commission would allow lands which do not meet state and/or local criteria to stay in the map. Specifically:

1. Any land that is currently in the map would be automatically included in the new map, regardless of whether it is less than 160 acres, or a housing subdivision, or a cluster subdivision.
2. Any neighbors that can cobble together a parcel of land totalling 160 acres would be allowed into the map, regardless of the fact that the land is under multiple owners.
3. Housing subdivisions would be included in the map and cluster subdivisions would be eligible for converting to resorts.
4. Exclusive Farm Use land would be eligible for resorts.

The Deschutes County Planning Commission has ignored the preponderance of public comments over several years of hearings that county citizens want greater restrictions on destination resorts. Instead the Commission has amplified the views of those favorable to "property rights," i.e., allowing landowners to do what they wish with their land regardless of statutes or zoning. The Commission's failure to make its recommendations conform with existing statutes and zoning is resulting in the waste of vast quantities of time of county planning time--and taxpayer money.

I urge you to stand by citizens who are fighting this assault on state land use policies, as you have done with the City of Bend's Urban Growth Boundary plan. Attached is an overview article further explaining the fight (p. 3) to make sure Deschutes County's resort overlay map complies with state and local law. I urge you to write a formal letter to the Deschutes Board of County Commissioners stating your concerns about the above matters, and encouraging the BOCC to approve a resort map that complies with statutes.

Thank you for considering my views, and feel free to contact me to discuss this matter further.

Merry Ann Moore for the
Sierra Club Juniper Group
merryann@bendcable.com
541.549.2468

**From:** Eva Eagle
**To:** lisa.howard@state.or.us
**Subject:** Destination Resorts
**Date:** Wednesday, March 17, 2010 3:49:44 PM

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I am sorry that I just heard about the commission's effort to gather public input on destination resorts. I live in Deschutes County, where the Planning Commission wants to declare all agricultural acreage to be eligible for destination resorts. We have resorts that have gone broke because the area is overbuilt in this type of accommodation. Worse yet, these so-called resorts are actually just gated communities for the wealthy. The DR designation is used to avoid ordinary land use regulations, which are already a bit loose around here.

So I hope this little email will let you know that there are many of us out here in Deschutes County who hope that the State will help regulate land use out here, because it is not at all clear that our county has the stomach for it.

Thank you,

Eva Eagle
17212 Pine Drive
Sisters, OR 97759

**From:** Asante Riverwind
**To:** lisa.howard@state.or.us
**Subject:** Testimony on Deschutes County Land Use Planning
**Date:** Thursday, March 18, 2010 10:52:58 AM

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Land Conservation and Development Commission,
Lisa Howard, lisa.howard@state.or.us

Dear Commissioners,

As this is a busy work day, I cannot participate directly in this morning's public testimony on critically important land-use issues in Central Oregon. I hereby submit these written comments.

Deschutes County is still engaged in a lengthy and ethically convoluted process of attempting to revise its destination resort overlay map. The County Planning Commission's recommended proposal fails to meet state and local requirements as it would permit lands that do not meet these criteria to stay in the map. Among core issues:

- All land currently within the map would remain in the new map, regardless if it is less than 160 acres, or a housing or "cluster" subdivision" subdivision;
- The proposal would permit multiple owners to create a patchwork "parcel" totaling 160 acres or more for inclusion in the map;
- Housing subdivisions would be included in the map and cluster subdivisions would be eligible for resort conversion;
- Exclusive Farm Use land would be eligible for resort development.

The Deschutes County Planning Commission has a democratic duty to found their recommendations on the preponderance of public comments and substantial environmental impacts evidence submitted during the several years course of public hearings. It is clearly established that county citizens need and desire greater land use restrictions on destination resorts. Democratic principle and community responsibility require the Commission to withdraw from its current course of action, which ignores public testimony and which would irresponsibly allow landowners to develop regardless of statutes, zoning and long term degradation of the public environmental and overall community quality of life. The Commission's failure to conform recommendations with existing statutes and zoning violates the public trust invested in them, and has resulted in considerable waste of county planning time, taxpayer funds, and community resources.

I join with the many people who are responsibly working to prevent this assault on state land use policies in urging the Commissioners to stand by the citizens of this county, as you have done with the City of Bend's Urban Growth Boundary plan. I strongly request that the Deschutes Board of County Commissioners be served a formal notice requiring the BOCC to approve a resort map that complies with state and county statutes and is accountable to the democratic wishes of the citizens of the county and the state of Oregon. Thank you,

Asante Riverwind
P. O. Box 5534
Bend, OR 97708
(541) 322-4065 office
asanteriverwind@gmail.com

Quotations, however eloquent or inspiring, cannot compare to a day spent free amidst the wonders of wild nature...