There has been testimony received and the record has been closed. The Board of Commissioners shall deliberate on the matter on October 16, 2014 at 9:00 a.m.

The two questions in the matter to consider are listed as follows:
1. Are the “events” a commercial use; and
2. Have the property owners developed on the property without proper land use permits.

The first question is, are the event a commercial use. In making this determination Coos County Zoning and Land Development Ordinance (CCZLDO) § 2.1.200 definitions have to be reviewed. The definition of a commercial use states “Privately-owned or operated facility or place of business open to the public for sale of goods or services. Examples include: restaurants, taverns, hotels, motels, offices, personal services, retail stores, recreational vehicle parks, and campgrounds. Public facilities offering similar goods or services are also defined as commercial uses.”

Response: Staff provided a detailed response to this question in the staff report. However, there has been testimony presented by both sides to be considered. Mr. Malone continues to support the position of the staff report; however, the McWilliams did point out in their testimony that Mr. Malone requested the Board go beyond the scope of this violation and declare that the track is a nuisance but failed to provide any cite to a law or rule that would allow the Board to make the interpretation. Coos County does not have any nuisance laws and this issue is beyond the two questions before the Board.

Is this a privately owned or operated facility open to the public for sale of goods or services. Staff does not find that a product or goods were sold by the McWilliams, even though there may have been vendors present, but money was accepted for a service and that service appears to be use of the property that is not categorized as a farm use. Ms. Warner provided written testimony to explain that due to the activities the land was cleared which actual resulted in better pasture land for the sheep herd.
The McWilliams rebuttal letter states that Mr. Malone is incorrect in his statement that all commercial uses in the Coos County Zoning and Land Development Ordinance (CCZLDO) is for Farm Use. The argument is that dog kennels, home occupations, mining and crushing, golf courses, private parks and playgrounds are not related to or seem to meet the definition of a commercial farm use. This would appear to be a true statement. The statute and rule do allow for other types of commercial uses that do not meet the definition of a commercial farm use. There is nothing in the CCZLDO that allows for the type of commercial use that Mr. and Mrs. McWilliams is allowing on their property; unless they were to try to justify this as a private park and I think that would be a hard application to justify.

The McWilliams do have some valid issues with consistency and they have made complaints regarding some of the unauthorized uses the neighbors have on their property and if found to be valid will follow the same process. Staff agrees with all parties that everyone should be treated the same under that law.

It does appear from the history that the property owners have tried to go through the process to obtain permits legally, although staff would point out there have been letters sent to them on a cautionary basis to help guide them to stay within the law. The prior Board made an interpretation but that should not cloud the current issues.

Once the Board has weighed all of the evidence and made a decision that decision will be reduced to writing in the form of an order and provided to all parties.

The second question is, have the property owners developed on the property without proper land use permits.

Response: The relevant definitions to consider are development develop and structure. definition of development is “[t]he act, process or result of developing” and the ordinance defines develop as “[t]o bring about growth or availability; to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels, or to create or terminate rights of access.” The definition of structure is a “[w]alled and roofed building including a gas or liquid storage tank that is principally above ground.”

There is evidence and testimony to show a tank was placed on the property. The Board may find that the tank is a structure and requires a zoning compliance letter if it is found to be an accessory to a permitted use. The Board may also find that there has been a certain type of development in the form of alterations to the property to create a track or mud bog. Staff did not see any evidence that the mud bog still is in existence so the Board should focus on the track and water tank in the decision. Even though definitions have been provided for development including physical change in the appearance of the property it may be difficult under the CCZLDO exactly how to rectify the situation.

Staff would suggest that if the use is to continue to be used for a commercial purpose a rezone or some type of application be submitted for an activity that is permitted in the Exclusive Farm Zone.
If the Board of Commissioners find that one or more violation of the CCZLDO exist that the violations be remedied by:
1. Obtaining a zoning compliance letter for any development that is permitted under the CCZLDO; and
2. Either re-zoning the property to a zoning that will allow the commercial use or abate the use.

If the Board of Commissioners finds that the property owners are in violation then pursuant to § 1.3.800 “[a] violation of this Ordinance may, at the discretion of the County, be rectified in either of the following ways:

1. The construction, erection, location, enlargement, or use, or change in use or uses of any structure or property in violation of this ordinance or those conditions and limitations approved pursuant to the provisions of this Ordinance shall be deemed a nuisance and may be enjoined, abated or removed as provided by ORS 215.185; or
2. Upon conviction as provided by ORS 203.065:
   a. a fine or not more than $100 for each day of violation where the offense is a continuing offense but such fine may not exceed $2,000.
   b. A fine of not more than $500 where the offense is not a continuing offense.

If you have any questions please contact staff.

Jill Rolfe
Coos County Planning Director

Attached: The record of the matter including the appeal

EC: Dave Perry, DLCD

CC: All Parties