Staff Report for Hearings Body Review

Date of Report: Thursday, August 28, 2014

Hearing Date: Thursday, September 04, 2014

Type of Application: APPEAL

File Number: AP-14-04

<table>
<thead>
<tr>
<th>Account Numbers</th>
<th>Map Numbers</th>
<th>Property Owners</th>
<th>Situs Address</th>
<th>Acreage</th>
<th>Zoning</th>
</tr>
</thead>
<tbody>
<tr>
<td>2913805</td>
<td>29S1501CB-02805</td>
<td>MUELLER, JOHN M. &amp; SUSAN L.</td>
<td>There is no address assigned to this parcel.</td>
<td>0.41 Acres</td>
<td>CONTROLLED DEVELOPMENT-10 (CD-10)</td>
</tr>
<tr>
<td>2899500</td>
<td>29S1501CB-01500</td>
<td>WIRKUS FAMILY TRUST WIRKUS, STEVE, TRUSTEE; ETAL</td>
<td>There is no address assigned to this parcel</td>
<td>0.54 Acres</td>
<td>CONTROLLED DEVELOPMENT-10 (CD-10)</td>
</tr>
</tbody>
</table>

Special Districts/Agencies:

<table>
<thead>
<tr>
<th>Bandon RFPD</th>
<th>City of Bandon</th>
<th>Coquille Indian Tribe</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bandon State Airport</td>
<td>Southern Coos Hospital District</td>
<td>Dave Perry, DLCD</td>
</tr>
<tr>
<td>Department of Environmental Quality</td>
<td>Mike Dado, County Surveyor</td>
<td>John Rowe, County Roadmaster</td>
</tr>
</tbody>
</table>
II. APPLICABLE REVIEW CRITERIA

APPLICABLE CRITERIA
Coos County Zoning and Land Development Ordinance (CCZLDO) and Coos County Comprehensive Plan (CCCP)

<table>
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<tr>
<th>Ordinance</th>
<th>Section/Article</th>
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<td>CCZLDO</td>
<td>§ 5.0.600</td>
<td>Board of Commissioners Review of Applications and Appeals</td>
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<td>CCZLDO</td>
<td>Article 5.8</td>
<td>Appeals of Discretionary Decisions</td>
</tr>
<tr>
<td>CCZLDO</td>
<td>§ 3.3.150</td>
<td>Property Line Adjustments (Ordinance No. 08-09-009PL)</td>
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<tr>
<td>CCZLDO</td>
<td>§ 3.3.152</td>
<td>Approval Criteria (Ordinance No. 08-09-009PL)</td>
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The criteria for property line adjustments was amended on May 13, 2014, Final Decision and Ordinance 14-04-007PL. The criteria listed in this report are criteria in effect at the time of the application.

SECTION 3.3.150. Property Line Adjustments. A property line adjustment is the relocation or elimination of all or a portion of the common property line between abutting properties that does not create an additional lot or parcel and where an existing unit of land that is reduced in size by the adjustment complies with all other provisions of this Ordinance. Property line adjustments may be permitted in any zone or across zones, or between lots or parcels in a recorded subdivision or partition plat.

III. BACKGROUND

The applicants in this case are John and Susan Mueller and Wirkus Family Trust. The appellants in this case are Don and Julie Graham. Bill Kloos is representing the appellants. This is an appeal of a single property line adjustment (PLA-14-20), which the Planning Director authorized on June 17, 2014. The appellant’s attorney filed an appeal raising several issues as basis for the appeal. The issues and Planning Staff’s responses are as follows:

1. **Issue:** The code provides for no appeal of the “ministerial” decision made by the County. The County may not force a citizen to go through an appeal process that is not provided for in the code. It is expensive and time consuming. The County should determine promptly that no local appeal is available.

   **Staff Response:** After conferring with County Counsel, it was determined that staff made a discretionary decision in its interpretation of CCZLDO 3.3.152(4) – meaning, it required interpretation of the ordinance and the exercise of legal judgment. Therefore, the interpretation is not a ministerial action, but rather a land use decision. ORS 197.015(10)(b)(A). As such, it is subject to a local appeal under CCZLDO Article 5.8.

2. **Issue:** The decision does not comply with CCZLDO § 3.3.152(4) which says:

   “All adjusted parcels shall be large enough to accommodate a use allowed in the zone where the property is located, including an on-site septic system.”
The findings made by the Director are not responsive to the standard. The decision talks around the standard, but does not include evidence and findings that the standard can be met. The standard requires a finding that the use and the septic will fit. This requires some site planning. It also requires some soil testing, as the septic can only go where the soils are adequate.

**Staff Response:** Mr. Kloos states that in order to develop a finding that the on-site septic can be accommodated, some site planning must be conducted along with soil testing to determine the adequate location. However, Mr. Kloos fails to understand that soil testing and site planning are not part of the relevant criteria or any criteria listed in the CCZLDO. Staff understands that these may be examples of requirements, but the CCZLDO does not provide criteria for determining how large a parcel would have to be to accommodate an on-site septic system in the CD-10 zone. In the unincorporated portions of Coos County, the on-site septic program is managed by the Department of Environmental Quality (DEQ), unless city services are availed to the property. If there is no city sewer available for these properties it should be noted that the applicant has stated that the septic site has been approved by the DEQ.

As for the argument concerning “a use”, the ordinance does not specify that an adjusted parcel accommodate all uses; rather, just a use. It also does not take into account that a variance may be requested for a use. Further, the term “a” is singular, and therefore staff just has to make a finding that “a” use can be accommodated. In looking at the CD-10 zoning uses found in Table 4.2e, non-structural shoreland stabilization is listed as “a” permitted use; therefore, a use may be accommodated on the properties and could be a legitimate use, as the properties do contain shoreland that abuts the property on the ocean side.

3. **Issue:** The decision does not comply with LDO 3.3.152(5), which says:

   “Resulting parcels shall comply with all applicable zoning ordinance provisions after the adjustment, unless the adjustment meets one of the following exceptions ****”

This finding fails to make the required ultimate conclusion that all applicable zoning ordinance provisions will be complied with after the adjustment. That finding needs to be made and supported in the record.

**Staff Response:** The property line adjustment meets one of the exception of § 3.3.152(5). Specifically, exception 3.3.152(5)(b), which provides that all resulting parcels shall comply with all applicable zoning ordinance provisions after the adjustment, unless:***

   b. Both abutting properties are smaller than the minimum lot or parcel size for the applicable zone before and after the property line adjustment

In this case, both of the resulting parcels are smaller than the minimum lot size under the development standards before and after the property line adjustment. As a result, the resulting parcels do not have to comply with all applicable zoning ordinance provisions, and staff is not required to make the ultimate conclusion that all applicable zoning ordinance provisions will be complied with after the adjustment.

Mr. Kloos raises the additional issues:
We see the following immediate shortcomings with this decision:

(a) This property line adjustment is being approved to ensure that TL 2805 complies with the code requirements for minimum street frontage – 50 feet. It is doing so at the expense of TL 1550, which, after the adjustment, will have 10 feet of street front and will not, after the adjustment, qualify for a dwelling approval.

The relevant provision is in Article 6.2 (Design and Development Standards). § 6.2.250 (Access) subsection (1)(a) is clear with regard to access being by a public street, other than an alley. Also, under Article 4, (Access), Table 4.4c explains that minimum street frontage in applicable CD-10 district is 50’. Based on these provisions, alley frontage does not count as street frontage, and TL 1500 will not have adequate street frontage.

(b) The resulting property on the north will not be able to meet code standards for road improvements. Article 7.3(Table 7.3) establishes standards for roads and there are clearly no standards for alley improvements. The standard for a road improvements in the UGB is 28 foot travel surface. § 7.1.900 addresses when and to what extent roads need to be improved. § 7.1.900 refers to Table 7.1, and under Subsection 3, it states that roads must be improved before a dwelling can be authorized. The point here is one cannot improve an alley to the standard required for a road in the UGB (28”), and you cannot site a dwelling until the standard is met. Again, this property line adjustment is being done for the benefit of TL 2805 to the extreme detriment of TL 1500.

Staff Response: In regards to Mr. Kloos’s statement that the “relevant provision is in Article 6.2”, Mr. Kloos incorrectly applies this Article, as the purpose of CCZLDO Article 6.2 is as follows:

“SECTION 6.2.100. Purpose. All land divisions shall conform to the design and development standards specified in the following sections. The standards so specified shall be considered as the minimum appropriate for land division, partition, PUD or subdivision development and are not intended to limit the developer from using higher standards of design and development.”

Nothing in Article 6.2 of the CCZLDO applies to a property line adjustment, as the purposes of a property line adjustment is to move a common property line between abutting properties that does not create an additional lot or parcel. As the entirety of CCZLDO Article 6.2 applies only to land divisions, partitions, PUD’s, or subdivision developments, and not property line adjustments, it need not be applied to property line adjustment criteria and is therefore irrelevant in this case.

The correct applicable development standards are provided in CCZLDO, Table 4.4(c). However, as there is no dwelling proposed at this time, these standards are irrelevant to the current issue. The development standards will only apply once a use has been requested under Article 4.2.

Nonetheless, staff is willing to explore what would occur if a dwelling should be requested:
If an applicant requested a dwelling authorization on either one of the parcels, Article 4.2 would apply. Article 4.2 informs an applicant that Article 4.6 “Overlay Zones”, Article 4.7 “Special Considerations”, Chapter V “Administration”, and Article 4.4 “General Development Standards” may limit and regulate uses and activities in Tables 4.2a through 4.2g. Uses for CD-10 are listed in Table 4.2e. Staff then looks to see if there are any overlay zones, special considerations or general development standards that apply. These properties do have special development considerations that require an administrative conditional use application. Under the development consideration for CD-10 (Table 4.4c) is listed minimum lot size, street frontage, lot width, lot depth, setbacks, building height and off-street parking. While this does not refer you to chapter VII, as the CD-10 does not require a road/street to be developed, it does require street frontage.

The applicable definition of street is:

STREET: A public or private way that is created or intended to provide ingress or egress to persons to one or more lots, parcels, areas or tracts of land. A ‘street’ does not include:

a. A driveway located exclusively on the same lot, parcel or tract of lands as the use it serves; or
b. A private way that is created or intended to provide ingress or egress to such land in conjunction with the use of such land exclusively for forestry, mining, or agricultural purposes.

As illustrated above, the definition does not exclude an alleyway from qualifying as a street.

Mr. Kloos has also argued that the resulting property on the north will not be able to meet code standards for road improvements, citing specifically Article 7.1 and 7.3. However, under both Articles, Mr. Kloos is mistaken.

Article 7.3 provides:

SECTION 7.3.100. Requirements for New Roads to be Created in Conjunction with a Partition, Subdivision or Planned Unit Development. The following standards shall apply to any proposed road that is to be created in conjunction with a land division within a City-UGB:

1. The provisions of Table 7.3 are applicable within the City-UGB or Urban Unincorporated Communities. The minimum road standards of Table 7.3 may be modified in the discretion of the County Roadmaster.

Clearly, the purpose of this Article is to set forth requirements for new roads to be created with a partition, subdivision or planned unit development, and that the Roadmaster has the discretion to modify the minimum road standards required by Table 7.3. Meaning, at this point it is impossible to determine whether the resulting property on the north will be unable to meet code standards for road improvements, as the Roadmaster has discretion to modify the minimum road standards.
In regards to Article 7.1., Table 7.1 states that improvements of roads are required before a “dwelling” may be authorized. This criterion would apply if a dwelling was requested. However, as a dwelling has not yet been requested, Article 7.1 is irrelevant in this case.

4. **Issue:** This decision does not comply with LDO 3.3.152.8, which says:

   “The adjustment shall not result in the loss of access to any parcel unless alternative access complying with Article 7.1 is provided.”

This provision means that the lawful access to the affected property may not be diminished if the access is already below what is required by the code. As explained above, the lawful access for TL 1500 is being diminished from 25’ to 10’ feet, contrary to the standard.

**Staff Response:** The criteria for property line adjustment states that the adjustment shall not result in the loss of access to any parcel unless alternative access that complies with Article 7.1 is provided. The only applicable provisions of Article 7.1 that apply to this case are § 7.1.900, § 7.1.1000 and Table 7.1. In reviewing Table 7.1, it does direct you to Article 7.3 for urban road standards. However, there is no developed or deeded access to either property at this point. Therefore, staff has made the finding that access will not be eliminated, which is all that is required.

### IV. STAFF SUGGESTED FINDINGS

<table>
<thead>
<tr>
<th>CCZLDO</th>
<th>§ 5.0.600</th>
<th>Board of Commissioners Review of Applications and Appeals</th>
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**SECTION 5.0.600 BOARD OF COMMISSIONERS REVIEW OF APPLICATIONS AND APPEALS**

The Board of Commissioners reserves the right to pre-empt any permit review process or appeal process and hear any permit application or appeal directly. The Board also reserves the right to appoint a Hearings Officer or Hearings Body to hear and consider any permit application or appeal. Notice of appeals of administrative actions shall be promptly forwarded to the Board of Commissioners, which may elect to hear the appeal instead of the Planning Commission.

**FINDING:** The Board of Commissioners was forwarded the appeal that was received on July 3, 2014 from Bill Kloos, Attorney for the Grahams. After reviewing the material the Board directed Planning Staff and Counsel to proceed through a de novo hearing held by the Planning Commission.

An order was drafted and adopted by the Board of Commissioners to: (1) pre-empt the Planning Director decision; and (2) process the appeal by appointing the hearings body to hear and consider the permit application for a property line adjustment.

<table>
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<tr>
<th>CCZLDO</th>
<th>Article 5.8</th>
<th>Appeals of Discretionary Decisions</th>
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</table>

**SECTION 5.8.100.**
Coos County has established an appeal period of 15 days from the date written notice of administrative or Planning Commission decision is mailed.

The Board of Commissioners or Hearings Body shall dismiss an appeal for failure to follow the requirements of this article. [OR 04 12 013PL 2/09/05]

SECTION 5.8.150. **Standing to Appeal.**

A decision by the Planning Director, Hearings Body, or Board of Commissioners to approve or deny an application may be appealed as identified in the Sections below. The appeal must be filed within the appeal period and meet one of the following criteria:

1. In the case of a decision by the Planning Director, the petitioner was entitled to notice of the decision; or
2. In the case of a decision by the Hearings Body, the petitioner was entitled to notice of the decision of the hearing; or
3. The person is aggrieved or has interests adversely affected by the decision.

In the case of an appeal of a Hearings Body decision to the Board of Commissioners, the petitioner must have appeared before the Hearings Body orally or in writing.

SECTION 5.8.200. **Appeals of Administrative Decisions.**

1. Notice of Appeal (NOA) shall be filed with the Department on the NOA form provided by the County along with any required filing fee. Upon receipt of an appeal, the Department shall schedule a public hearing before the Hearings Body and provide public notice as provided in Section 5.0.900(A). The hearing on appeal of an administrative decision shall be de novo (ORS 215.416).

2. The appeal hearing procedure shall be in accordance with Section 5.7.300.

**FINDING:** The determination was made that this was a discretionary decision and an appeal was timely and properly filed. The appellant identified standing as an adjacent owner, as they are within sight or sound of the proposal; however, staff is assuming this is an argument for how the person is aggrieved or has interest adversely affected by the decision. Staff would suggest that the Planning Commission make the finding that the appeal was filed in compliance with § 5.8.150(1), as the Grahams were entitled notice of appeal because they are an adjacent property owner within the notification distance.

The argument that a property line adjustment has adversely affected an adjacent property owner for sight and sound reasons does not seem to be a valid argument as moving of a line does not authorize any development, rather it is simply a map change.

| CCZLDO  | § 3.3.150 | Property Line Adjustments (Ordinance No. 08-09-009PL) |
SECTION 3.3.150. Property Line Adjustments. A property line adjustment is the relocation or elimination of all or a portion of the common property line between abutting properties that does not create an additional lot or parcel and where an existing unit of land that is reduced in size by the adjustment complies with all other provisions of this Ordinance. Property line adjustments may be permitted in any zone or across zones, or between lots or parcels in a recorded subdivision or partition plat.

SECTION 3.3.151. Procedure. A single adjustment of one line between two abutting properties will be approved as a ministerial act.

Multiple adjustments between more than two abutting properties will be processed as a land use decision and may be approved as a single application on condition that each adjustment is completed prior to the next, in accordance with ORS Chapter 92. Land owners seeking property line adjustment(s) must file with the Planning Department:

1. A scaled plot plan shall be submitted with an application for a property line adjustment showing:
   a. All existing property lines;
   b. The proposed location of the adjusted property line;
   c. The location of existing buildings, with distances to the existing and the proposed property line;
   d. The location of septic systems, wells and easements, and their distances from the existing and the proposed property line; and
   e. The existing size and the proposed size of each lot or parcel, in square feet or acres.
2. Written consent from all owners of the properties that will be modified by the property line adjustment.
3. If the application is approved, the adjusted property line must be surveyed and monumented by an Oregon licensed surveyor in accordance with the procedures of ORS 92, except, a survey and monumentation are not required when:
   a. All parcels will be greater than 10 acres or when the property line adjustment involves the sale; or
   b. There is a grant by a public agency or public body of excess property resulting from the acquisition of land by the state, a political subdivision or special district for highways, county roads, city streets or other right-of-way purposes property.
4. If required, a survey complying with ORS 209.250 must be filed with the County Surveyor within one year of the date of final approval of an application for a property line adjustment.
5. Within one year of the date of final approval of an application for a property line adjustment a deed must be recorded with the County Clerk. The deed shall contain the names of the parties, the description of the adjusted property line, references to original recorded documents, and signatures of all parties with proper acknowledgement (ORS 92.190). The deed shall also contain a separate description of the area being conveyed from one parcel to the other and shall contain a statement that the conveyance is part of a property line adjustment.
Finding: The applicants submitted all the required documents for this request. A survey will be required if the application is approved.

<table>
<thead>
<tr>
<th>CCZLDO</th>
<th>§ 3.3.152</th>
<th>Approval Criteria (Ordinance No. 08-09-009PL)</th>
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<tr>
<td><strong>SECTION 3.3.152.</strong> Approval Criteria. A property line adjustment may be approved if it complies with all of the following:</td>
<td></td>
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<tr>
<td>1. The existing lots or parcels were lawfully created in accordance with Section 3.3.800;</td>
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<td>FINDING: Tax lot 1500 was determined to contain discrete lawfully created parcels on August 19, 2003. This tax lot contains lots 12 through 16 in Block 5 of the 1907 Sunset City Plat, a portion of property located outside of the plat, but a discrete parcel pursuant to Court Case 91CV0210. The property also contains a vacated portion of Vesta Lane. Therefore, for the reasons stated above, tax lot 1500 complies with LDO § 3.3.800, “Lawfully Created Lots and Parcels”.</td>
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<tr>
<td>Tax lot 2805 contains Lots 20 through 22 of Block 12 of the 1907 Sunset City Plat, also an adjacent parcel of property that is outside of the plat, but a discrete parcel pursuant to Court Case 91CV0210. This tax lot also contains a vacated portion of Vesta Lane. Each lot within the 1907 Sunset City Plat is a lawfully created parcel, as is the portion of property that lies outside of the plat. Therefore, the property complies with LDO § 3.3.800, “Lawfully Created Lots and Parcels”.</td>
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<tr>
<td>As a result, Staff is able to determine through past planning actions and recorded documents that the request meets this criterion.</td>
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<td>2. No new parcels will result from the adjustment;</td>
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<tr>
<td>FINDING: The request is to move a line between two properties. Therefore, no new parcels will result from the adjustment.</td>
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<tr>
<td>3. All buildings and improvements (e.g., septic systems, wells, etc.) will comply with the minimum setback requirements from the adjusted property line, unless the building or improvement does not currently comply, in which case the building or improvement shall not be rendered more nonconforming by the adjustment;</td>
<td></td>
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<tr>
<td>FINDING: There are no current improvements on this property. Therefore, this requirement does not apply.</td>
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<tr>
<td>4. All adjusted parcels shall be large enough to accommodate a use allowed in the zone where the property is located, including an on-site septic system.</td>
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</tbody>
</table>
FINDING: This subsection requires a finding that the adjusted parcels be large enough to accommodate a use allowed in the zone. This provision does not require that all uses be examined, just a use, including an on-site septic system. The uses for the CD-10 zone are listed in Table 4.2e, and there are several uses that may be accommodated after the property line adjustment is completed. The appellant has made the argument that a dwelling is a use that should be reviewed. However, the criteria for property line adjustments do not require that applicant to disclose the purpose of the property line adjustment, or the future use of the property. Furthermore, the provision states “including an on-site-septic system,” which is not a use regulated by the CCZLDO, as the on-site septic system program is managed by the State of Oregon Department of Environmental Quality. Therefore, an on-site septic system does not have to be calculated into the properties size if it is not a listed use.

5. Resulting lots or parcels shall comply with all applicable zoning ordinance provisions after the adjustment, unless the adjustment meets one of the following exceptions:

   a. One or both abutting properties are smaller than the minimum lot or parcel size for the applicable zone before the property line adjustment and, after the adjustment, one is as large or larger than the minimum lot or parcel size for the applicable zone; or

   b. Both abutting properties are smaller than the minimum lot or parcel size for the applicable zone before and after the property line adjustment, or

   c. Property line adjustments by a public body for the purpose of incorporating excess right-of-way property into adjacent property shall not be subject to minimum lot size requirements.

FINDING: The properties are less than the required minimum lot size of one (1) acre and both will remain under the minimum lot size. Therefore, the adjustment meets exception “b” and is not required to comply with all of the zoning ordinance provisions.

6. Property line adjustments on land zoned Exclusive Farm Use, Forest and Forest Mixed Use may not be used to:

   a. Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;

   b. Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as
large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or

c. Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.

**FINDING:** The properties are not within any of the resource zones; therefore, this does not apply.

7. The adjustment shall not result in parcel(s) that overlap a city limit or county line.

**FINDING:** The adjustment will not result in parcels overlapping the city or county line. Therefore, the adjustment complies with this provision.

8. The adjustment shall not result in the loss of access to any parcel unless alternative access complying with Article 7.1 is provided.

**FINDING:** There are no deeded or permitted accesses on these properties; therefore, the movement of the line will not result in any loss of access. This is undeveloped property.

9. If any of the parcels involved in the lot line adjustment(s) is subject to conditions of a prior land use permit, then the area added to that parcel shall be subject to any conditions imposed under the permit.

**FINDING:** There are no valid prior land use approvals subject to any conditions imposed under the permit that.

### V. SUMMARY

The application meets the criteria for a property line adjustment based on the applicable criteria. There were no comments received on this application for any agencies or parties other than the appellants.

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
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<th>DESCRIPTION</th>
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<td>3.</td>
<td>June 17, 2014, Letter to Applicants regarding authorization of the property line adjustment request</td>
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<td>4.</td>
<td>May 15, 2014, Response letter from Mike Dado, County Surveyor</td>
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<td></td>
<td>May 15, 2014, Letter to Mike Dado, County Surveyor requesting comments from Amy Dibble, Planning Staff</td>
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<td>5.</td>
<td>May 9, 2014, Property line adjustment application</td>
<td>14</td>
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SECTION 5.8.900. Notice of Appeal.

NOTICE OF APPEAL (NOA)

Appellant: DON GRAHAM
Mailing address: 3411 LONE OAK CT FAIR OAKS CA 95628
Phone: 916-728-4111

Appellant's Representative: BILL KIPO'S, ATTORNEY
Mailing address: KIPO'S 375 W. 4TH AVE AUBURN CA 95608
Phone: 530-721-2612

Email: JGRAHAM@AOL.COM

The appellant hereby requests consideration of the following decision:

File Number: PLA-14-242 Nature of Application: PLA

Decision: APPROVED Decision Date: 6-17-01

1. State the reasons for the appeal, citing the specific Comprehensive Plan or CCZLDO provisions which are alleged to be violated:

   SEE LETTER

2. A statement of the standing of the appeal:

   APPELLANT OWNS MY SIGHTLINE

I, BILL KIPO'S, ATTORNEY, have filed an appeal application with the Coos County Planning Department to be reviewed and processed according to state and county requirements. I acknowledge the following disclosures:

I understand I may ask questions and receive input from planning staff, but acknowledge that I am ultimately responsible for all information and documentation submitted with this NOA. I further understand planning staff cannot legally bind the county to any fact or circumstance that conflicts with state or local laws, and in the event a conflict occurs, all such statements or agreements are void.

I understand that I have the burden of demonstrating my appeal is supported by the applicable criteria. The criteria for approving or denying my request have been furnished to me as a part of this application and I acknowledge receipt.
I understand the Hearings Body will dismiss an appeal for failure to follow the requirements of Article 5.8.

Signed: Bill Kline Bill Kline Date: 7-2-014

Chris Hood 7-3-014
July 2, 2014

Ms. Jill Rolfe, Planning Director  
Coos County  
250 N. Baxter  
Coos County Court House  
Coquille, Oregon 97423

Re: Property Line Adjustment PLA-14-20

Dear Ms. Rolfe:

Please accept this letter, appeal form, and check for $250 as an appeal by Don and Julie Graham of the decision above. They are adjacent owners within sight and sound of this land.

The issues are:

1. This appeal is being filed as a precaution, based on your email of 6/23 saying:

   It [the code] is silent only because the ordinance does not have a process for appeals of property line adjustments. However, I think we would process this as any other appeal and send to Planning Commission.

   I will confer with my Counsel and get back to you shortly.

The code provides for no appeal of the “ministerial” decision made by the County. The County may not force a citizen to go through an appeal process that is not provided for in the code. It is expensive and time consuming. The County should determine promptly that no local appeal is available.

2. The decision does not comply with LDC 3.3.152.4, which says:

   “All adjusted parcels shall be large enough to accommodate a use allowed in the zone where the property is located, including an on-site septic system.”

The findings made by the Director are not responsive to the standard. The decision talks around the standard, but does not include evidence and findings that the standard can be met. The standard requires a finding that the use and the septic will fit. This requires some site planning. It also requires some soil testing, as the septic can only go where the soils are adequate.

3. The decision does not comply with LDO 3.3.152.5, which says:
"Resulting parcels shall comply with all applicable zoning ordinance provisions after the adjustment, unless the adjustment meets one of the following exceptions:
** ** **

This finding fails to make the required ultimate conclusion that all applicable zoning ordinance provisions will be complied with after the adjustment. That finding needs to be made and supported in the record.

We see the following immediate shortcomings with this decision:

(a) This property line adjustment is being approved to ensure that TL 2805 complies with the code requirements for minimum street frontage -- 50 feet. It is doing so at the expense of TL 1550, which, after the adjustment, will have only 10 feet of street front and will not, after the adjustment, qualify for a dwelling approval.

The relevant provision is in Article 6.2 (Design and Development Standards). Section 6.2.250 (Access) subsection (1)(a) is clear with regard to access being by a public street, other than an alley. Also, under Article 4, (Access), Table 4.4e explains that minimum street frontage in the applicable CD-10 district is 50'. Based on these provisions, alley frontage does not count as street frontage, and TL 1500 will not have adequate street frontage.

(b) The resulting property on the north will not be able to meet code standards for road improvements. Article 7.3 (Table 7.3) establishes standards for roads and there are clearly no standards for alley improvements. The standard for a road improvements in the UGB is a 28 foot travel surface. Section 7.1.900 addresses when and to what extent roads need to be improved. Section 7.1.900 refers to Table 7.1, and under Subsection 3, it states that roads must be improved before a dwelling may be authorized. The point here is one cannot improve an alley to the standard required for a road in the UGB (28'), and you cannot site a dwelling until the standard is met. Again, this property line adjustment is being done for the benefit of TL 2805 to the extreme detriment of TL 1500.

4. This decision does not comply with LDO 3.3.152.8, which says:

"The adjustment shall not result in the loss of access to any parcel unless alternative access complying with Article 7.1 is provided."

This provision means that the lawful access to the affected property may not be diminished if the access is already below what is required by the code. As explained above, the lawful access for TL 1500 is being diminished from 25' to 10 feet, contrary to the standard.

Sincerely,

**Bill Kloos**
Bill Kloos
Mr. Kloos,

If you would like to file an appeal please use the provisions of Section 5.8.200 of the Coos County Zoning and Land Development Ordinance.

Thank you,

Jill Rolfe
Planning Director,
Coos County Planning Department
225 N. Adams St.
Coquille OR 97423
250 N. Baxter (Mailing)
541-396-7770
planning@co.coos.or.us

From: Bill Kloos [mailto:billkloos@landuseoregon.com]
Sent: Monday, June 23, 2014 4:28 PM
To: Jill Rolfe
Cc: Bill Kloos; Don Graham (jgraham193@aol.com)
Subject: RE: Mueller Property Line Adjustment

Thanks for looking into it.

Bill Kloos
Law Office of Bill Kloos, PC
375 W. 4th Avenue, Suite 204
Eugene, OR 97401
Phone: (541) 343-8596
Email: billkloos@landuseoregon.com
Web: www.LandUseOregon.com

Please do not read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication may contain confidential and/or privileged information intended only for the addressee. If you have received this e-mail in error, please call immediately at 541-343-8596. Also, please notify me by e-mail. Thank you.

From: Jill Rolfe [mailto:jrolfe@co.coos.or.us]
Sent: Monday, June 23, 2014 4:19 PM
To: Bill Kloos
Subject: RE: Mueller Property Line Adjustment
Mr. Kloos,

It is silent only because the ordinance does not have a process for appeals of property line adjustments. However, I think we would process this as any other appeal and send to Planning Commission.

I will confer with my Counsel and get back to you shortly.

Thank you,

Jill Rolfe
Planning Director,
Coos County Planning Department
225 N. Adams St.
Coquille OR 97423
250 N. Baxter (Mailing)
541-396-7770
planning@co.coos.or.us

From: Bill Kloos [mailto:billkloos@landuseoregon.com]
Sent: Monday, June 23, 2014 3:30 PM
To: Planning Department
Cc: Bill Kloos; Chris Hood (chood@stuntzer.com); Don Graham (jgraham193@aol.com)
Subject: FW: Mueller Property Line Adjustment

Ms. Rolfe:

The attached decision dated June 17 arrived by email on June 18.

The decision is silent about any local appeal rights.

If I were to file an appeal on behalf of my client, would the county process the appeal? If so, who would hear that appeal?

Thank you for your prompt response.

Bill Kloos
Law Office of Bill Kloos, PC
375 W. 4th Avenue, Suite 204
Eugene, OR 97401
Phone: (541) 343-8596
Email: billkloos@landuseoregon.com
Web: www.LandUseOregon.com

Please do not read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication may contain confidential and/or privileged information intended only for the addressee. If you have received this e-mail in error, please call immediately at 541-343-8596. Also, please notify me by e-mail. Thank you.

From: Amy Dibble [mailto:adibbble@co.coos.or.us]
Sent: Wednesday, June 18, 2014 5:09 PM
To: Bill Kloos
Subject: Mueller Property Line Adjustment

Mr. Kloos,

Attached please find the authorization letter for the property line adjustment for the Mueller's.

Please contact the Planning Department if you have any further questions.

Thank you,
Amy
June 17, 2014

John & Susan Muller Wirikus Family Trust
PO Box 510 3303 Cadencia St.
Park City, UT 84060-0510 Carlsbad, CA 92009-7807

RE: Property Line Adjustment PLA-14-20 between two lawfully created parcels in Township 29, Range 15, Section 01CB Tax Lot(s) 1500 & 2805

Property Owners:

Tax Lot 1500 contains approximately .57 of an acre and Tax Lot 2805 contains approximately .57 of an acre. Both tax lots are zoned Controlled Development-10 (CD-10). This is a single property line adjustment as defined in Coos County Zoning and Land Development Ordinance (LDO) § 3.3.150. A property line adjustment may be approved if it complies with LDO §3.3.152. Staff has authorized the property line adjustment based on the following criteria:

SECTION 3.3.152 Approval Criteria. A property line adjustment may be approved if it complies with all of the following:

1. The existing lots or parcels were lawfully created in accordance with Section 3.3.800;

FINDING: Tax lot 1500 was determined to contain discrete lawfully created parcels on August 19, 2003. This tax lot contains lots 12 through 16 in Block 5 of the 1907 Sunset City Plat, a portion of property located outside of the plat, but a discrete parcel pursuant to Court Case 91CV0210. The property also contains a vacated portion of Vesta Lane. Therefore, for the reasons stated above, tax lot 1500 complies with LDO § 3.3.800 “Lawfully Created Lots and Parcels”.

Tax lot 2805 contains Lots 20 through 22 of Block 12 of the 1907 Sunset City Plat, also an adjacent parcel of property that is outside of the plat, but a discrete parcel pursuant to Court Case 91CV0210. This tax lot also contains a vacated portion of Vesta Lane. Each lot within the 1907 Sunset City Plat is a lawfully created parcel as is the portion of property that lies outside of the plat. Therefore, the property complies with LDO § 3.3.800 “Lawfully Created Lots and Parcels”.

As a result, Staff is able to determine through past planning actions and recorded documents that the request meets this criterion.

2. No new parcels will result from the adjustment;

FINDING: The request is to move a line between two properties. Therefore, no new parcels will result from the adjustment.
3. All buildings and improvements (e.g., septic systems, wells, etc.) will comply with the minimum setback requirements from the adjusted property line, unless the building or improvement does not currently comply, in which case the building or improvement shall not be rendered more nonconforming by the adjustment.

FINDING: There are no current improvements on this property. Therefore, this requirement does not apply.

4. All adjusted parcels shall be large enough to accommodate a use allowed in the zone where the property is located, including an on-site septic system.

FINDING: The property line adjustment will not itself prohibit any listed use within the zoning district. Coos County recognizes that Department of Environmental Quality (DEQ) has the authority over on-site septic system installation. The applicant will be required at the time of development to obtain permits from DEQ and State Building Codes.

The properties were increased in size when Coos County Board of Commissioners granted the vacation request of Vesta Lane. The vacation reduced the size of the street frontage to 25 feet for tax lot 2805. However, the applicants are proposing a property line adjustment to reconfigure the street frontage to allow for an access that will be in compliance with development standards that require a 50 foot minimum street frontage. Tax lot 1500 exceeds the minimum requirement for street frontage as it fronts a public right-of-way that is not prohibited from being used to satisfy this requirement.

5. Resulting lots or parcels shall comply with all applicable zoning ordinance provisions after the adjustment, unless the adjustment meets one of the following exceptions:
   a. One or both abutting properties are smaller than the minimum lot or parcel size for the applicable zone before the property line adjustment and, after the adjustment, one is as large or larger than the minimum lot or parcel size for the applicable zone; or
   b. Both abutting properties are smaller than the minimum lot or parcel size for the applicable zone before and after the property line adjustment; or
   c. Property line adjustments by a public body for the purpose of incorporating excess right-of-way property into adjacent property shall not be subject to minimum lot size requirements.

FINDING: The properties in this area are not served with public water or sewer and the minimum lot size is one acre. Both abutting properties are smaller than the minimum lot size for the applicable zone before the property line adjustment and after the adjustment. Therefore, these properties fall within the exception of Subsection 5(a).

6. Property line adjustments on land zoned Exclusive Farm Use, Forest and Forest Mixed Use may not be used to:
   a. Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or
b. Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or

c. Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.

FINDING: These tax lots are not located within a resource zoning district. Therefore, this section is not applicable to this application.

7. The adjustment shall not result in parcel(s) that overlap a city limit or county line.

FINDING: The property line adjustment does not result in parcels that overlap a city limit or the county line. Therefore, this criterion is not applicable.

8. The adjustment shall not result in the loss of access to any parcel unless alternative access complying with Article 7.1 is provided.

FINDING: There will be no loss of access to either parcel.

9. If any of the parcels involved in the lot line adjustment(s) is subject to conditions of a prior land use permit, then the area added to that parcel shall be subject to any conditions imposed under the permit.

FINDING: There are no conditions on these tax lots.

On May 15, 2014, the Coos County Surveyor provided comments on the proposal. A survey of the adjusted line is required because both of the adjusted parcels will not be greater than 10 acres in size after the adjustment.

CONCLUSION:
Based on the findings stated above and the Coos County Surveyor's comments, it has been determined that this property line adjustment meets all requirements set forth in LDO Sections 3.3.150, 3.3.151 and 3.3.152. Therefore, this property line adjustment is hereby authorized by the Coos County Planning Department, effective as of the date of this letter.

Please be advised, within one year of the date of final authorization of your application for property line adjustment, a deed must be recorded with the County Clerk which shall contain the names of the parties, the description of the adjusted property line, references to original recorded documents, and signatures of all parties with proper acknowledgement (ORS 92.190). The deed shall also contain a separate description of the area being conveyed from one parcel to the other and shall contain a statement that the conveyance is part of a property line adjustment. This must be completed before any other land use decisions can be made on the subject properties. To complete the process, please submit a copy of your filed adjustment deed to the Coos County Planning Department.
Pursuant to ORS 308.210(3), all taxes, fees, or other charges must be paid before the Assessor’s office can process the property line adjustment deed.

If you have any questions, please contact the Coos County Planning Department at 541-396-7770. The Planning Department is open to the public Monday through Friday, 8:00 AM to 12:00 PM and 1:00 PM to 5:00 PM.

Sincerely,

Jill Rolfe
Jill Rolfe, Planning Director
Coos County Planning Department

Attachments: Maps provided by applicant

EC: Michael Dado, County Surveyor
    County Assessor’s office
    Dave Perry, DLCD

CC: Property Owners
    Applicants’ Surveyor
    Bill Kloos, Law Office of Bill Kloos, PC
    Robert S. Miller III, Attorney at Law
    File
May 15, 2014

TO: Amy Dibble, Planning Alde

RE: Property Line Adjustment
    Section 01.CB, TL 1500 & 2805
    T29S, R15W
    John & Susan Mueller
    Wirkus Family Trust
    PLA 14-20

Dear Amy:

I see no objection to the proposed adjustment. A survey of the adjusted line will be required, because both adjusted parcels are not greater than 10 acres in size.

Very truly yours,

Michael L. Dado
Coos County Surveyor
MEMO

DATE : May 15, 2014
TO : Mike Dado, Surveyor
FROM : Amy Dibble, Planning Aide
RE: PLA-14-20

Property location: Township 29, Range 15, Section 01CB,
Tax Lot(s) 1600 and 2805

Co-Owner(s): John & Susan Mueller
Wirkus Family Trust

Property zoned: CD-10

Attached please find a property line adjustment proposal submitted by the property owner(s).

The proposal is to move the common boundary line between two discrete parcels.

Please review the attached information and notify the Planning Department within ten (10) days of the above date of any objections you may have to the proposal. After ten days, if there are no objections, a letter will be sent to the property owners indicating the next procedure required by the Planning Department.

Thank you.

Attachments: The applicant's proposal

C: File
Amy Dibble  
Coos County Planning Dept.  
250 N. Baxter  
Coquille, OR 97423  

May 8, 2014  

Dear Amy,  

Please find the enclosed application for property line adjustment, including the following documents:  

Coos Co. Planning Dept. Property Line Adjustment Application  

$300 Application Fee  

Current Deed of Record for Mueller Property  

Current Deed of Record for Wirkus Property  

Signed Authorization Form for Mueller Property  

Signed Authorization for Wirkus Property  

Coos County Record of Street Vacation  

Surveyors Property Line Adjustment Application Map  

Please advise on review of application materials if we have completed the submission requirements.  

Thank you,  

David Curtin  

david@cutler-anderson.com  

206-842-4710

RECEIVED  

MAY 08 2014  

COOS COUNTY  

PLANNING DEPARTMENT
Introduction

The property line adjustment application is to review changes in property lines when no new lots are being created. For example, property lines may be changed to account for the location of fences, driveways, gardens and buildings. A property owner may discover that a fence is located on a neighbor’s property. As a solution, the property owners may agree to relocate their property lines. A property line adjustment review is needed to make sure the change is consistent with zoning standards.

In addition to filling out the application form, the applicant needs to draw a plot plan. The plot plan will show the property lines and dimensions, and the location of all buildings, wells, septic tanks and drainfield for the parcels which are being adjusted.

The applicants need to submit the application to the Planning Department. Once the application and plot plan are accepted, staff will review the proposal.

A single adjustment of one line between two abutting properties will be approved as a ministerial\(^*\) act.

Multiple adjustments between more than two abutting properties will be processed as a land use decision and may be approved as a single application on condition that each adjustment is completed prior to the next, in accordance with ORS Chapter 92.

Approval will become final after the applicant(s) complies with the approval criteria including completion of surveys when required and recording of the property line adjustment deed(s). These must be completed within one year of the approval.

This information is provided as a courtesy and is not intended to replace the provisions of Article 3.3, Sections 3.3.150 through 3.3.152 for property line adjustments.

If you have any questions about this application, please feel free to contact this office at 541-396-3121 extension 210 or visit us at 225 North Adams Street in Owen Building in Coquille, Oregon.

\(^*\) ministerial decisions are not land use decisions as described in ORS 197.015 and are not subject to appeal as land use decisions

Updated 6/10
Application Check List (for departmental use only)

Date Received: __________ Fee paid: __________

Receipt number: __________ Check number: __________

Application accepted by: __________ Completeness reviewed by: __________

Other applications included: ____________________________________________

Review procedure type: Ministerial __________

Land Use Dec. __________ Date deemed complete: __________

_____ Lawfully Created Parcel(s)/Lot(s)
_____ Owner(s) signature
_____ Consent if not Owner
_____ Applicant(s) signature
_____ Complete Plot Plan

_____ Property #1 contains: Sewage system __________ Access __________
   Property #2 contains: Sewage system __________ Access __________

_____ Property development standards can be met:

Property #1: Size __________ Setbacks __________ Coverage __________ Width __________ Depth __________ Frontage __________

Property #2: Size __________ Setbacks __________ Coverage __________ Width __________ Depth __________ Frontage __________

Proposal is located within:

Zoning District __________ Plan designation __________

UG8 (identify) __________ Planning area __________

Airport notification area __________
Please place a check mark on the appropriate type of review that has been requested. An incomplete application will not be processed. Applicant is responsible for completing the form. Attach additional sheets to answer questions if needed.

A. Applicant/Owner:
Name: John and Susan Mueller
Telephone: 435-654-0957
Address: 123 Maple St
City: Park City
State: UT Zip Code: 84060-0910

B. Applicant/Owner:
Name: Wielus Family Trust
Telephone: 760-486-0841
Address: 3303 Cadencia St
City: Carlsbad
State: CA Zip Code: 92009-7807

C. Property Descriptions:

Property #1
Township 29S Range 15W Section 01CB Tax Lot 2805
Tax Account 2913805 Lot Size 0.51 AC Zoning District ED-10

Property #2
Township 29S Range 16W Section 01CB Tax Lot 1500
Tax Account 2896800 Lot Size 0.51 AC Zoning District ED-10

D. Required Information to Submit with Application pursuant to Section 3.3.151 of the CZLDO.

1. A scaled plot plan shall be submitted with an application for a property line adjustment showing: (Please try to draw your plot plan on paper that is easily copied or provide smaller copies with the larger map)
   a. All existing property lines;
   b. The proposed location of the adjusted property line;
   c. The location of existing buildings, with distances to the existing and the proposed property line;
   d. The location of septic systems, wells and easements, and their distances from the existing and the proposed property line; and
   e. The existing size and the proposed size of each lot or parcel, in square feet or acres.

2. Written consent from all owners of the properties that will be modified by the property line adjustment.

3. A copy of all current deeds of record for parcels involved.

4. Describe the purpose of the property line adjustment.

Updated 6/10
E. Authorization:

All areas must be initiated by all applicant(s) prior to the Planning Department accepting any application.

I hereby attest that I am authorized to make the application for a conditional use and the statements within this application are true and correct to the best of my knowledge and belief. I affirm that this is a legally created tract, lot or parcel of land. I understand that I have the right to an attorney for verification as to the creation of the subject property. I understand that any action authorized by Coos County may be revoked if it is determined that the action was issued based upon false statements or misrepresentation.

ORS 215.416 Permit application; fees; consolidated procedures; hearings; notice; approval criteria; decision without hearing. (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of land may apply in writing to such persons as the governing body designates, for a permit, in the manner prescribed by the governing body. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service. The Coos County Board of Commissioners adopt a schedule of fees which reflect the average review cost of processing and set-forth that the Planning Department shall charge the actual cost of processing an application. Therefore, upon completion of review of your submitted application/permit a cost evaluation will be done and any balance owed will be billed to the applicant(s) and is due at that time. By signing this form you acknowledge that you are responsible to pay any debt caused by the processing of this application. Furthermore, the Coos County Planning Department reserves the right to determine the appropriate amount of time required to thoroughly complete any type of request and, by signing this page as the applicant and/or owner of the subject property, you agree to pay the amount owed as a result of this review. If the amount is not paid within 30 days of the invoice, or other arrangements have not been made, the Planning Department may choose to revoke this permit or send this debt to a collection agency at your expense.

I understand it is the function of the planning office to impartially review my application and to address all issues affecting it regardless of whether the issues promote or hinder the approval of my application. In the event a public hearing is required to consider my application, I agree I bear the burden of proof. I understand that approval is not guaranteed and the applicant(s) bear the burden of proof to demonstrate compliance with the applicable review criteria.

As applicant(s) I/we acknowledge that is in my/our desire to submit this application and staff has not encouraged or discouraged the submission of this application.

As the applicant(s) I/we acknowledge pursuant to Section 3.3.151(C), the property line adjustment deed must be recorded with the County Clerk within one year from the date of final approval from the Planning Department.

Updated 6/10
II. Authorization:
All areas must be initiated by all applicant(s) prior to the Planning Department accepting any application.

I hereby attest that I am authorized to make the application for a conditional use and the statements within this application are true and correct to the best of my knowledge and belief. I affirm that this is a legally created tract, lot or parcel of land. I understand that I have the right to an attorney for verification as to the creation of the subject property. I understand that any action authorized by Coos County may be revoked if it is determined that the action was issued based upon false statements or misrepresentation.

ORS 215.415 Permit application; fees; consolidated procedures; hearings; notice; approval criteria; decision without hearing. (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of land may apply in writing to such persons as the governing body designates, for a permit, in the manner prescribed by the governing body. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service. The Coos County Board of Commissioners adopt a schedule of fees which reflect the average review cost of processing and set-forth that the Planning Department shall charge the actual cost of processing an application. Therefore, upon completion of review of your submitted application/permit a cost evaluation will be done and any balance owed will be billed to the applicant(s) and is due at that time. By signing this form you acknowledge that you are responsible to pay any debt caused by the processing of this application. Furthermore, the Coos County Planning Department reserves the right to determine the appropriate amount of time required to thoroughly complete any type of request and, by signing this page as the applicant and/or owner of the subject property, you agree to pay the amount owed as a result of this review. If the amount is not paid within 90 days of the invoice, or other arrangements have not been made, the Planning Department may choose to revoke this permit or send this debt to a collection agency at your expense.

I understand it is the function of the planning office to impartially review my application and to address all issues affecting it regardless of whether the issues promote or hinder the approval of my application. In the event a public hearing is required to consider my application, I agree I bear the burden of proof. I understand that approval is not guaranteed and the applicant(s) bear the burden of proof to demonstrate compliance with the applicable review criteria.

As applicant(s) I/we acknowledge that is in my/our desire to submit this application and staff has not encouraged or discouraged the submission of this application.

As the applicant(s) I/we acknowledge pursuant to Section 3.3.151(6), the property line adjustment deed must be recorded with the County Clerk within one year from the date of final approval from the Planning Department.

Applicant(s) Original Signature

MAY 5, 2014

Date

Applicant(s) Original Signature

MAY 5, 2014

Date

Updated 6/10
IN THE MATTER OF THE VACATION OF A PORTION OF
VESTA LANE (AKA VESTA STREET)
ORDER
13-02-028PL

NOW BEFORE the Board of Commissioners sitting for the transaction of County business on the 3rd day of September, 2013 is the matter of the vacation of a portion of Vesta Lane also referred to as Vesta Street on the plat map, described as follows and as further shown on the map attached hereto, labeled Attachment "A" and incorporated herein by reference:

In the NW ¼ of the SW ¼ of Section 1, Township 29 South, Range 15 W.W.M. Coos County, Oregon. In the Plat of Sunset City, that portion of Vesta Street described as follows: Beginning at the Southeast corner of Lot 12, Block 5, Plat of Sunset City, Coos County, Oregon, said point being on the North line of said Vesta Street; thence South to the Northeast corner of Lot 22, Block 12, Plat of Sunset City, said point being on the South line of said Vesta Street; thence West along said South line for a distance of 220 feet more or less to a point on the Oregon Coast Vegetation Line as described per O.R.S. 390-776; thence along said vegetation line, North 15°15'18" East for a distance of 62.19 feet more or less to a point on the North line of said Vesta Street; thence East along said North line for a distance of 208 feet more or less back to the point of beginning. Said portion of Vesta Street containing 0.29 acres of land more or less.

AND IT APPEARING to the Board that John & Susan Mueller and Stephen & Diane Wirkus (Wirkus Family Trust) submitted a petition for said vacation on January 17, 2013 (Case #VAC-13-02);

AND IT FURTHER APPEARING to the Board that, in accordance with O.R.S 368.351, 100% of the abutting landowners have submitted written consent to this vacation and the County Roadmaster has submitted a written report finding this vacation to be in the public interest;

AND IT FURTHER APPEARING to the Board that, as permitted by O.R.S 368.351, a hearing on this matter was held on September 3, 2013, and that public notice of said hearing was provided as required by O.R.S 368.346 through publication in the World Newspaper on August 13, 2013 and August 22, 2013; by posting at the property proposed to be vacated on August 13, 2013; and by certified mail to abutting landowners on August 2, 2013;

AND IT FURTHER APPEARING that the Board, having read said Petition and report from the County Roadmaster and any other documents in the record, and having considered the testimony offered at said hearing, has determined the vacation of the above described portion of Vesta Lane to be in the public interest and consistent with the requirements of Oregon law;

NOW, THEREFORE, IT IS HEREBY ORDERED that the above described portion of Vesta Lane be vacated;

AND IT IS FURTHER ORDERED that the amount of the costs resulting from this approved vacation, not including any recording fees, is $1561, and the above-described petitioners shall be liable for and he/she hereby directed to pay such sum, after subtracting therefrom any amounts previously paid, and shall additionally be required to pay any and all fees for recording this Order as determined by the County Clerk;

AND IT IS FURTHER ORDERED that this Order and supporting document(s) be recorded with the Coos County Clerk, with copies filed with the County Planning Department, County Assessor, and County Surveyor.

DATED this 24th day of December, 2013.

STATE OF OREGON

COUNTY OF COOS

This instrument was acknowledged before me this 24th day of December, 2013, by JOHN W. SWEET

as Commissioners of Coos County.

COOS COUNTY, OREGON

2014-01982

$51.00

03/17/2014 04:06:26 PM

Bobbi L. Brooks
Notary Public for Oregon

My Commission Expires: 9/23/17
RETURN TO KEY TITLE

Title Order No: 24-31303
Tax Account No: T201168802
1000 AM20995.00

WARRANTY DEED
(02S.923.23)

Richard L. Cole and Edythe P. Cole, Trustee(s) of the Cole Family Trust, Grantor conveys and warrants to Steve Winkus and Diane Winkus, Trustee(s) of the Winkus Family Trust dated March 5, 1999, Grantor the following described real property free of encumbrances except as specifically set forth herein:

See Exhibit 'A' attached hereto and by reference made a part hereof.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FREE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 39.930.

The true consideration for this conveyance is $325,500.00 which is paid an accommodation pursuant to an IRC section 1031 exchange.

Dated this 1st day of October, 2001.

The Cole Family Trust

Richard L. Cole, Trustee

Edythe P. Cole, Trustee

State of CA, County of _______________ Yes.

This instrument was acknowledged before me on ________, 2001, by Richard L. Cole and Edythe P. Cole, Trustees of the Cole Family Trust.

Notary Public

10/03/2001 1001-11801
10/03/2001 11801
Page 1 of 2
STATE OF California
COUNTY OF Butte
On October 1, 2001 before me, Y. Ford, a Notary Public
PERSONALLY APPEARED
Richard R Cole and
Edythe P Cole

PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT HE/SHE/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S) OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY
EXHIBIT 'A'

Legal Description:

Lots 12, 13, 14, 15 and 16, Block 5, Sunset City, Coos County, Oregon, together with vacated Gould Street abutting the West line of said Lots that would inure to said property by operation of law.

ALSO:

That portion of the following described property bounded on the North by the Southerly line extended Westerly of Lot 17, Block 5, Sunset City and bounded on the South by the Southerly line extended Westerly of Lot 12, Block 6, Sunset City; that portion of the Northwest quarter of the Southwest quarter of Section 1, Township 29 South, Range 15 West of the Willamette Meridian, Coos County, Oregon, lying between the Westerly boundary line of the Plat of Sunset City and the line of vegetation per O.R.S. 390-770.

Subject to:

Taxes for the fiscal year 2001-2002, a lien in an amount to be determined, but not yet payable.

The following matters are excluded from the coverage of the policy based on the proximity of the property to the Pacific Ocean:

a. Rights of the public and of the State of Oregon in the ocean shore and dry sand area as declared acquired under the provisions of ORS 300.005-770 or west of the seaward edge of vegetation as defined in Thornton v. Hay, Oregon Supreme Court.

b. Rights of the public and governmental bodies (including claims of ownership) to that portion of the premises lying below the high water mark of the Pacific Ocean.

c. Any adverse claim based on the assertion that:

i. Some portion of said land has been created by artificial means, or has accreted to such portion so created.

ii. Some portion of said land has been brought within the boundary thereof by an erosional movement of the Pacific Ocean or has been formed by accretion to such portion.

The rights of the public in and to that portion of the premises herein described lying within the limits of public roads, streets and highways.
After recording return to:
John M. Mueller and Susan L. Mueller
P.O. Box 510
Park City, UT 84060

Until a change is requested all tax statements shall be sent to the following address:
John M. Mueller and Susan L. Mueller
P.O. Box 510
Park City, UT 84060

File No.: 7132-1965309 (lad)
Date: September 28, 2012

STATUTORY WARRANTY DEED

Bell State Bank & Trust (Who acquired title as State Bank & Trust), Grantor, conveys and warrants to John M. Mueller and Susan L. Mueller as tenants by the entirety, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

See Legal Description attached hereto as Exhibit A and by this reference incorporated herein.

Subject to:
1. Covenant, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

The true consideration for this conveyance is $225,000.00. (Here comply with requirements of ORS 93.030)

Dated this 5 day of November 2010.

Bell State Bank & Trust (formerly known as State Bank & Trust)

By: Gustav Staehl, Vice President

Bell State Bank & Trust (formerly known as State Bank & Trust)

By: Jon Aarsvold, Senior Vice President
STATE OF: ND

County of: Cass

This Instrument was acknowledged before me on this 5th day of November, 2012, by Gustav Steahl as Vice President of Bell State Bank & Trust (formerly known as State Bank & Trust), on behalf of the Bank.

Mathew Stenehjem
Notary Public
State of North Dakota
My Commission Expires June 1, 2015

STATE OF: ND

County of: Cass

This Instrument was acknowledged before me on this 5th day of November, 2012, by Jon Aarsvold as Senior Vice President of Bell State Bank & Trust (formerly known as State Bank & Trust), on behalf of the Bank.

Mathew Stenehjem
Notary Public
State of North Dakota
My Commission Expires June 1, 2015
EXHIBIT A

LEGAL DESCRIPTION: Real property in the County of Coos, State of Oregon, described as follows:

Parcel A:

That portion of the following described property bounded on the North by the Northerly line extended Westerly of Lot 22, Block 12, Sunset City and bounded on the South by the Southerly line extended Westerly of Lot 20, Block 12, Sunset City; that portion of the Northwest quarter of the Southwest quarter of Section 1, Township 29 South, Range 15 West of the Willamette Meridian, Coos County, Oregon, lying between the Westerly boundary line of the Plat of Sunset City and the line of vegetation per O.R.S. 390-770.

Parcel B:

Lots 20, 21 and 22, Block 12, Sunset City, Coos County, Oregon, together with that portion of vacated Gould Avenue that would inure to said property by operation of law, save and except therefrom any portion of the vacated alley in said Block 12, abutting said lots.