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LEGAL COUNSEL

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COMMISSIONERS' JOURNAL

CJ 2010-193

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BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
18.132.025 To Allow Minor Variances to Recognize * ORDINANCE NO. 2010-003
Long-Standing Occupation of Properties Not *
Located in Farm (EFU) or Forest (F) Zones. *
*
*

WHEREAS, at the request of the Board of County Commissioners ("Board"), Deschutes County initiated this text amendment to Deschutes County Code ("DCC") 18.132.025, Minor Variances, in order to permit conditional property line adjustments that would reduce the size of substandard properties by more than ten (10) percent in all zones, except in Farm (EFU) and Forest (F) zones, and

WHEREAS, after notice was give in accordance with applicable law, a public hearing was held on February 11, 2010 before the Deschutes County Planning Commission and, on that same day, the Planning Commission recommended approval of the text amendments; and; and

WHEREAS the Board of County Commissioners considered this matter after a duly noticed public hearing on March 22, 2010 and concluded that the proposed changes are consistent with the County's Comprehensive Plan and that the public will benefit from changes to the land use regulations; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC 18.132.025, Minor Variances, is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

///

Section 2. FINDINGS. The Board of Commissioners adopts as it's findings in support of this amendment Exhibit "B", attached and incorporated by reference herein.

Dated this 7th of April, 2010

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Dennis R. Luke
DENNIS R. LUKE, Chair

Alan Unger
ALAN UNGER, Vice Chair

ATTEST:

Bonnie Baker
Recording Secretary

Tammy Baney - absent -
TAMMY BANEY, Commissioner

Date of 1st Reading: 22nd day of March, 2010.

Date of 2nd Reading: 7th day of April, 2010.

Record of Adoption Vote:

| Commissioner | Yes | No | Abstained | Excused |
|----------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| Dennis R. Luke | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Alan Unger | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Tammy Baney | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Effective date: 5th day of July, 2010.

Chapter 18.132. VARIANCES

18.132.010. Variance Application.

18.132.020. Authority of Hearings Body.

18.132.025. Minor Variances.

18.132.030. Hearings Body Action on Variance.

18.132.040. Variance Procedure.

18.132.010. Variance Application.

The Planning Director or Hearings Body may authorize area or use variance from the requirements of DCC Title 18. Application for a variance shall be made by petition stating fully the grounds of the application and the facts relied upon by the petitioner.

(Ord. 91-020 §1, 1991)

18.132.020. Authority of Hearings Body.

A variance may be granted unqualifiedly or may be granted subject to prescribed conditions, provided that the Planning Director or Hearings Body shall make all of the following findings:

A. Area variance.

1. That the literal application of the ordinance would create practical difficulties resulting in greater private expense than public benefit.
2. That the condition creating the difficulty is not general throughout the surrounding area but is unique to the applicant's site.
3. That the condition was not created by the applicant. A self-created difficulty will be found if the applicant knew or should have known of the restriction at the time the site was purchased.
4. That the variance conforms to the Comprehensive Plan and the intent of the ordinance being varied.

B. Use variance.

1. That the literal application of the ordinance would result in unnecessary hardship to the applicant. An unnecessary hardship will be found when the site cannot be put to any beneficial use under the terms of the applicable ordinance.
2. Each of the findings listed in DCC 18.132.020(A)(1), (2) and (4).

(Ord. 93-043 §24, 1993; Ord. 91-020 §1, 1991)

18.132.025. Minor Variances.

A variance seeking to depart from on-site requirements of DCC Title 18, 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 in conformance with DCC 18.132.025.

A. In the case of a setback or size variance, the applicant shall show that the approval will result in:

1. More efficient use of the site;
2. Preservation of natural features where appropriate;
3. Adequate provision of light and privacy to adjoining properties; and
4. Preservation of topographic, vegetative and drainage features which would be adversely affected by application of the standards otherwise required by DCC Title 18.

B. A parcel that is smaller than the minimum lot size at the time of application may not be reduced by more than 10 percent from its current size without a variance.

(Ord. 2004-013 §15, 2004; Ord. 91-038 §3, 1991)

C. Notwithstanding B, above, a substandard property may be reduced by more than 10 percent of its current size without a variance if the property is:

1. Located outside of a Farm (EFU) or Forest (F) zone;

2. The purpose of the property line adjustment is to correct deed descriptions to coincide with long-standing occupation lines of the properties; and

3. The discrepancy between the deed lines and the occupation lines is documented by submittal of a narrative and maps prepared by an Oregon Licensed Professional Surveyor.

4. As used in this section, "long-standing" means in excess of ten (10) years.

(Ord. 2010-03; Ord. 2004-013 §15, 2004; Ord. 91-038 §3, 1991)

18.132.030. Hearings Body Action on Variance.

In granting or denying a variance, the Planning Director or Hearings Body shall make a written record of his findings and the facts in connection therewith, and shall describe the variance granted and the conditions designated. The Planning Department shall keep the findings on file, and a copy of the variance granted and the condition thereof shall be recorded with the County Clerk.

(Ord. 91-020 §1, 1991)

18.132.040. Variance Procedure.

The variance application shall be processed according to the terms of DCC Title 22, the Uniform Development Procedures Ordinance.

(Ord. 91-020 §1, 1991)

**DECISION OF THE DESCHUTES COUNTY
BOARD OF COUNTY COMMISSIONERS**

FILE NUMBERS: TA-09-8

**APPLICANTS/
PROPERTY OWNERS:** Deschutes County
117 NW Lafayette Avenue
Bend OR 97701

REQUEST: The applicant requests a Text Amendment in order to permit minor variances that would allow conditional property line adjustments that would reduce the minimum lot sizes of the zone by more than 10 percent in all zones, except in Farm (EFU) and Forest (F) zones.

I. APPLICABLE STANDARDS AND CRITERIA:

1. Title 18 County Zoning
Chapter 18.132
Chapter 18.136
2. Title 22 Deschutes County Development Procedures Ordinance
Chapter 22.08
Chapter 22.12
3. Title 23 Deschutes County Comprehensive Plan
Chapter 23.124

II. FINDINGS OF FACT:

History:

The Deschutes County Board of Commissioners adopted regulations for land development in PL-2, Subdivision Ordinance, on September 9, 1970, PL-5 Zoning Ordinance adopted December 2, 1971 and effective on January 1, 1972 and PL-14, Subdivision and Partition Ordinance adopted and effective November 1, 1979.

Deschutes County contains multiple subdivisions and other land divisions that have occurred prior to and after the adoption of regulations noted above. Land divisions in Deschutes County prior to 1970 were typically subject to ORS 92 beginning in 1955.

An example of one such subdivision (See Attachment "A") is the Dustan Road area. Portions of the Dustan Road area¹ were divided by the original property owners beginning in 1951 after non-registered surveyors were hired to establish property lines and provide some kind of monuments marking property locations within the tract. Original property deeds for individual

¹ The Dustan Road neighborhood contains approximately 200 individual tax lots, including multiple properties owned by Deschutes County. The Dustan Road neighborhood is bordered on the north by Burgess Road, on the west by Dorrance Meadows Road, on the south by Timber Haven Subdivision and on the east by Lechner Acres and Woodland Park Homesites.

properties in the Dustan Road neighborhood area were sold and recorded based upon "Aliquot" part descriptions of the section. Beginning in 1961 Professional land surveyors began to locate individual tax lots of the Dustan Road neighborhood based on deed descriptions using the aliquot parts of the section. In 1961, it became very apparent to the Professional land surveyors, there were conflicts between the legal descriptions and actual property lines used for development of existing dwellings, structures and roads. Due to the property location conflicts discovered in 1961, many existing property owners were encumbered with conflicts between their actual areas of occupation and their legally described ownership. These kinds of boundary disputes sometimes may be resolved by property line adjustments between neighbors; otherwise, property owners have to go to court to resolve these disputes. In the case of the Dustan Road properties, there are so many properties involved that individual property line adjustments are problematic under the current code because of the variance requirements in 18.152. This amendment would remove barriers in the code and allow property owners to more cheaply and expeditiously engage in property line adjustments.

The Deschutes County Planning Commission held a public hearing for TA-09-8 on February 11, 2010, accepted testimony regarding the proposed text amendment, amended proposed text in Chapter 18.132.020, closed the public hearing, deliberated and voted unanimously to recommend the Board of County Commissioners adopt TA-09-8. The BOCC (Board) held a public hearing for TA-09-08 on March 22, 2010 and no parties testified in favor of or in opposition to this text amendment. The Board closed the public hearing and voted to approve TA-09-08.

The Board notes that the conditional criteria listed in the new amended text of 18.132.025(C) may not be applicable to resolve other property conflict situations due to survey or deed description errors.

III. CONCLUSIONS OF LAW:

TEXT AMENDMENT

1. Title 18, County Zoning

FINDING: DCC Title 18 may be amended as set forth in DCC 18.136.

2. Chapter 18.132 VARIANCES

FINDING: This text amendment, adding sub-section 18.132.025(C), will provide a limited opportunity for Deschutes County property owners to allow a substandard property to be reduced by more than 10 percent of its current size without a variance, if the property is located outside of a Farm (EFU) or Forest (F) zone and the purpose of the property line adjustment is to correct deed descriptions to coincide with long-standing occupation lines of the properties

3. Chapter 18.136 AMENDMENTS

Section 18.136.010 Amendments.

DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi-judicial map amendment shall be accomplished by filing an application on forms

provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.

FINDING: This application will amend portions of Title 18 in accordance with all provisions of county and state land use laws.

4. **Title 22 Deschutes County Development Procedures Ordinance**

5. **Chapter 22.08 GENERAL PROVISIONS**

22.08.005 Pre-application conference.

FINDING: The applicant has conferred with appropriate members of County staff prior to making application.

6. **Chapter 22.12 LEGISLATIVE PROCEDURES**

22.12.010 Hearing Required.

No legislative change shall be adopted without review by the Planning Commission and a public hearing before the Board of County Commissioners. Public hearings before the Planning Commission shall be set at the discretion of the Planning Director unless otherwise required by state law.

FINDING: A hearing on February 11, 2010 has been conducted by the Planning Commission for review of this proposal. The Board of County Commissioners conducted a public hearing on March 22, 2010 to consider this text amendment after the Planning Commission made a unanimous recommendation for approval to the Board of County Commissioners.

22.12.020 Notice.

FINDING: Copies of the application and materials were mailed to the Department of Land Conservation and Development on December 8, 2009. The notice of a public hearing for the Text Amendment was published in *The Bend Bulletin* newspaper on January 10, 2010 and March 2, 2010. The Board notes that the Text Amendment application does not include a change in statute or administrative rule that requires Deschutes County to change the base zoning classification or adopt an amendment to an Ordinance that limits or prohibits otherwise permissible land uses previously allowed; therefore, the notification requirements of ORS 197.047 does not apply.

22.12.030 Initiation of legislative changes.

A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of Commissioners or the Planning Commission.

FINDING: The applicant is the County Planning Division, as directed by the Board of Commissioners. A complete application has been submitted.

7. Title 23 Deschutes County Comprehensive Plan

8. Chapter 23.124. CITIZEN INVOLVEMENT

23.124.020 Goals.

- A. *To promote and maintain better communication between the community's various segments (i.e., governmental agencies, business groups, special districts and the general public).*
- B. *To provide the opportunity for the public to identify issues of concern and encourage their involvement in planning to addresses those issues.*
- C. *To serve as a liaison between elected and appointed bodies and citizens of the county.*
- D. *To provide educational opportunities for the people to learn about planning and how it may be used to assist their community and themselves.*

FINDING: Public involvement has been actively encouraged through two (2) public hearing notices posted in the Bend Bulletin local newspaper. The Deschutes County Planning Commission held a public hearing for TA-09-8 on February 11, 2010 and the Board of County Commissioners held a public hearing for TA-09-08 on March 22, 2010. Any public testimony was received during each hearing. The County initiated TA-09-8 to respond to public requests for assistance to property owners in the Dustan Road and/or other areas in the County that would conditionally permit property owners to exceed minimum lot size requirements in 18.152.

ATTACHMENT "A"

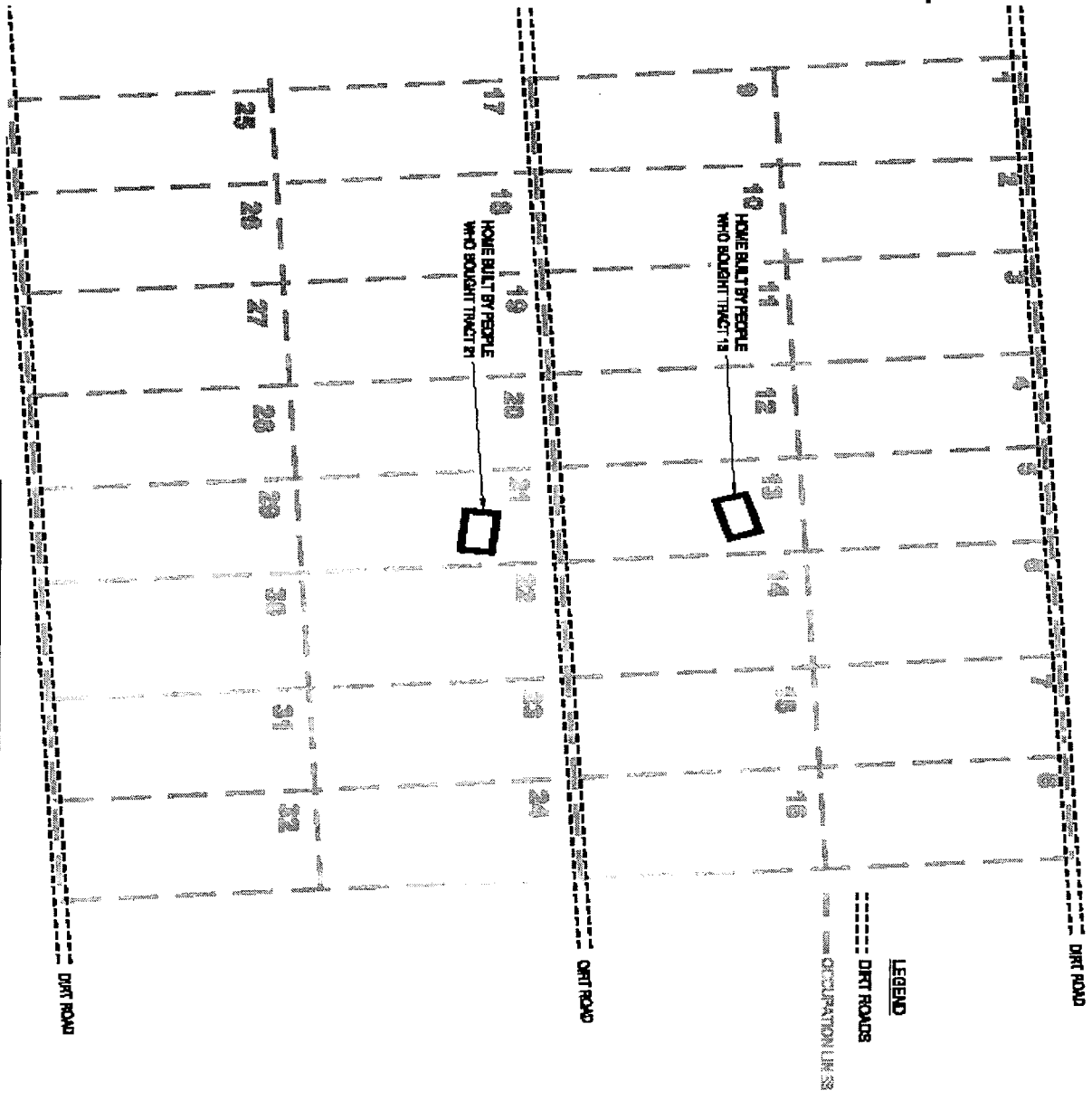
DUSTAN ROAD NEIGHBORHOOD

APPARENT INTENT OF TRACT CONFIGURATION BASED ON OCCUPATION LINES SHOWN ON 2005 AERIAL PHOTO.

NOTE:

THESE EXAMPLE SKETCHES DO NOT REPRESENT ANY PARTICULAR TAX LOTS OR DWELLINGS. THEY DEPICT A HYPOTHETICAL WORST CASE SCENARIO OF OCCUPATION LINES NOT MATCHING DEED LINES. THE NUMBERS ASSIGNED TO THE TRACTS ARE ARBITRARY NUMBERS TO ILLUSTRATE THE SUPPOSED DIFFERENCES BETWEEN OCCUPATION LINES AND DEED LINES.

AERIAL PHOTOS AND REPORTS FROM SURVEYORS AND PROPERTY OWNERS INDICATE THAT THE GREATEST AREAS OF DEVIATION BETWEEN OCCUPATION LINES AND DEED LINES ARE IN THE SOUTHERLY PORTION OF THE NEIGHBORHOOD IN THE AREA OF DAVIS AVENUE, GREENWOOD DRIVE AND BLUEBIRD LANE. TO THE NORTH AND WEST OF THESE AREAS, THE PROBLEM MAY NOT BE AS SEVERE AS SHOWN ON THESE EXAMPLES. TO DETERMINE THE ACTUAL DIFFERENCE BETWEEN ANY GIVEN LOTS OCCUPATION LINES AND DEED LINES, A SURVEYOR WOULD NEED TO RETRACE THE DEED LINES AND COMPARE THEM WITH ACTUAL LINES OF OCCUPATION AND OTHER EVIDENCE ON THE GROUND.



EXAMPLE OF OWNERSHIP PROBLEMS IN DUSTAN ROAD NEIGHBORHOOD (T22S,R10E,SEC 4)

| | | | | |
|---|------------|-----------------|--------------|--------------|
| RESOURCES COUNTY SURVEYOR'S OFFICE | SCALE NONE | DRAWN BY M.A.B. | DATE 7/18/08 | SHEET 1 OF 4 |
| APPARENT INTENDED TRACT CONFIGURATION | | | | |
| ALSO SEE 27TH STREET, BEID, DR, 97702 (ALSO SEE 27TH STREET FOR DEED INFORMATION) | | | | |
| 07/18/2008 | | | | |

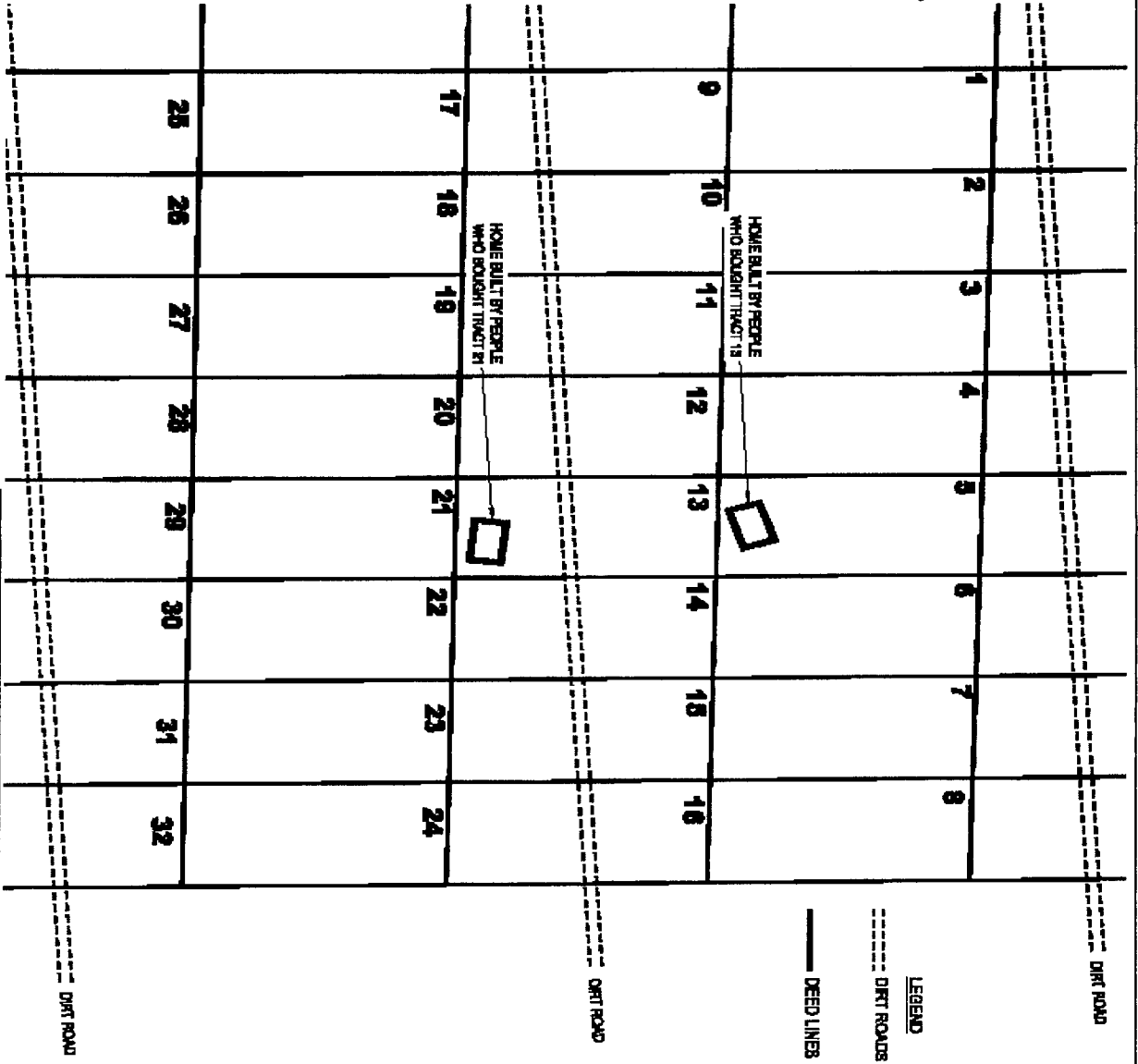
DUSTAN ROAD NEIGHBORHOOD
TRACT BOUNDARIES AS DESCRIBED IN ORIGINAL DEEDS. THESE ARE THE LINES SHOWN ON THE COUNTY ASSESSOR'S MAPS.

NOTE:

THESE EXAMPLE SKETCHES DO NOT REPRESENT ANY PARTICULAR TAX LOTS OR DWELLINGS. THEY DEPICT A HYPOTHETICAL WORST CASE SCENARIO OF OCCUPATION LINES NOT MATCHING DEED LINES.

THE NUMBERS ASSIGNED TO THE TRACTS ARE ARBITRARY NUMBERS TO ILLUSTRATE THE SUPPOSED DIFFERENCES BETWEEN OCCUPATION LINES AND DEED LINES.

AERIAL PHOTOS AND REPORTS FROM SURVEYORS AND PROPERTY OWNERS INDICATE THAT THE GREATEST AREAS OF DEVIATION BETWEEN OCCUPATION LINES AND DEED LINES ARE IN THE SOUTHERLY PORTION OF THE NEIGHBORHOOD IN THE AREA OF DAVIS AVENUE, GREENWOOD DRIVE AND BLUEBIRD LANE. TO THE NORTH AND WEST OF THESE AREAS, THE PROBLEM MAY NOT BE AS SEVERE AS SHOWN ON THESE EXAMPLES. TO DETERMINE THE ACTUAL DIFFERENCE BETWEEN ANY GIVEN LOT'S OCCUPATION LINES AND DEED LINES, A SURVEYOR WOULD NEED TO RETRACE THE DEED LINES AND COMPARE THEM WITH ACTUAL LINES OF OCCUPATION AND OTHER EVIDENCE ON THE GROUND.



EXAMPLE OF OWNERSHIP PROBLEMS IN DUSTAN ROAD NEIGHBORHOOD (T22S,R10E,SEC 4)

RESOURCES COUNTY SURVEYORS' OFFICE SCALE NONE DRAWN BY NAME DATE 7/18/08 SHEET 2 OF 4
 8150 SE 27TH STREET, BEND, OR 97702 FILE# 22-10-04 sketch for Dave Binnick/dwg 07/18/2008

DUSTAN ROAD NEIGHBORHOOD

OCCUPATION LINES VS. TRACT BOUNDARIES AS DESCRIBED IN ORIGINAL DEEDS.

NOTE:

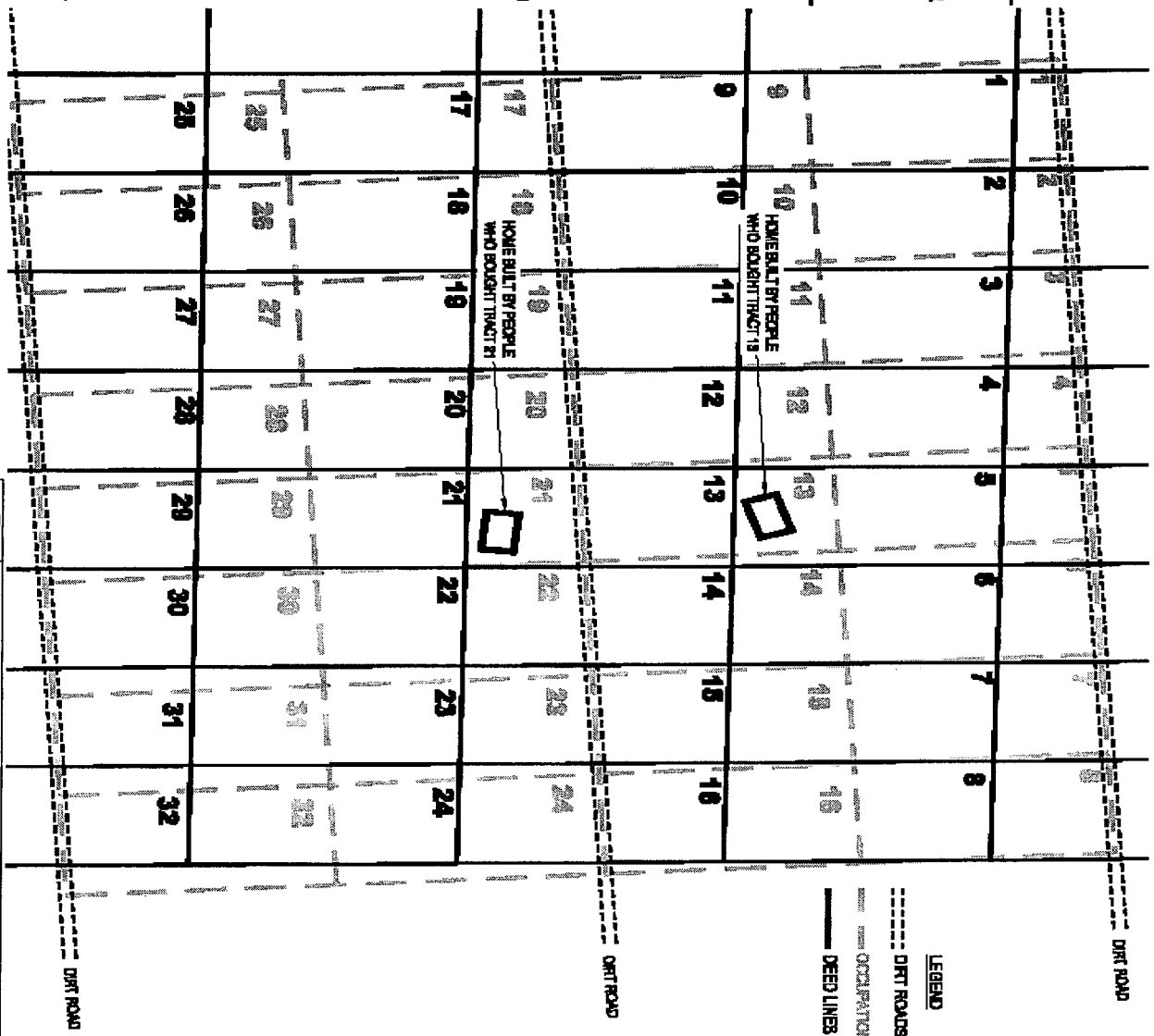
THESE EXAMPLE SKETCHES DO NOT REPRESENT ANY PARTICULAR TAX LOTS OR DWELLINGS. THEY DEPICT A HYPOTHETICAL WORST CASE SCENARIO OF OCCUPATION LINES NOT MATCHING DEED LINES.

THE DIFFERENCES BETWEEN OCCUPATION AND DEED LINES SHOWN ON THIS PAGE AND THE NEXT PAGE MAY BE EXAGGERATED FROM THE ACTUAL DIFFERENCES THAT EXIST ON THE GROUND.

THE NUMBERS ASSIGNED TO THE TRACTS ARE ARBITRARY NUMBERS TO ILLUSTRATE THE SUPPOSED DIFFERENCES BETWEEN OCCUPATION LINES AND DEED LINES.

AERIAL PHOTOS AND REPORTS FROM SURVEYORS AND PROPERTY OWNERS INDICATE THAT THE GREATEST AREAS OF DEVIATION BETWEEN OCCUPATION LINES AND DEED LINES ARE IN THE SOUTHERLY PORTION OF THE NEIGHBORHOOD IN THE AREA OF DAVIS AVENUE, GREENWOOD DRIVE AND BLUEBIRD LANE, TO THE NORTH AND WEST OF THESE AREAS, THE PROBLEM MAY NOT BE AS SEVERE AS SHOWN ON THESE EXAMPLES.

TO DETERMINE THE ACTUAL DIFFERENCE BETWEEN ANY GIVEN LOTS OCCUPATION LINES AND DEED LINES, A SURVEYOR WOULD NEED TO RETRACE THE DEED LINES AND COMPARE THEM WITH ACTUAL LINES OF OCCUPATION AND OTHER EVIDENCE ON THE GROUND.



EXAMPLE OF OWNERSHIP PROBLEMS IN DUSTAN ROAD NEIGHBORHOOD (T22S,R10E,SEC 4)

DESIGNER: GADLEY SURVEYORS' OFFICE SCALE: NONE DRAWN BY: M.A.B. DATE: 7/18/08 SHEET 3 OF 4
 PROJECT: 22-10-04 Dustan Rd Neighborhood (Sec 4) 22-10-04 sketch for base benchmarking 07/18/2008

DUSTYAN ROAD NEIGHBORHOOD

EXAMPLE OF STEPS NEEDED TO CORRECT TRACT 13 THROUGH PROPERTY LINE ADJUSTMENT PROCESS:

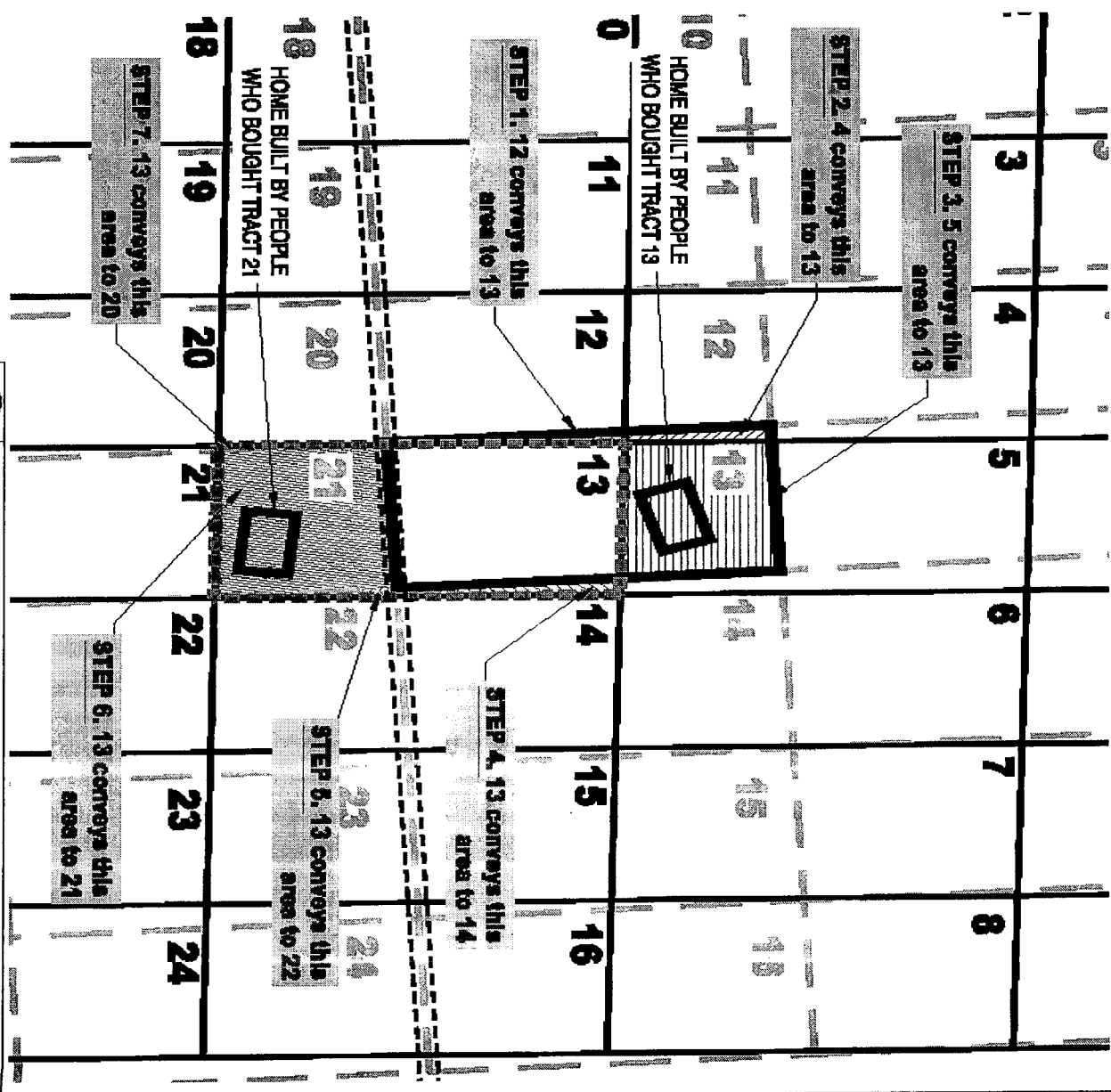
- DEEDS FROM NEIGHBORS TO TRACT 13:
- STEP 1. CURRENT OWNER OF TRACT 12 MUST CONVEY SMALL SLIVER OF LAND TO OWNER OF TRACT 13
- STEP 2. CURRENT OWNER OF TRACT 4 MUST CONVEY SMALL SLIVER OF LAND TO OWNER OF TRACT 13
- STEP 3. CURRENT OWNER OF TRACT 5 MUST CONVEY LARGE RECTANGLE OF LAND TO OWNER OF TRACT 13

- DEEDS FROM TRACT 13 TO NEIGHBORS:
- STEP 4. OWNER OF TRACT 13 MUST CONVEY SMALL SLIVER OF LAND TO CURRENT OWNER OF TRACT 14
- STEP 5. OWNER OF TRACT 13 MUST CONVEY SMALL SLIVER OF LAND TO CURRENT OWNER OF TRACT 22
- STEP 6. OWNER OF TRACT 13 MUST CONVEY LARGE RECTANGLE OF LAND TO CURRENT OWNER OF TRACT 21
- STEP 7. OWNER OF TRACT 13 MUST CONVEY SMALL SLIVER OF LAND TO CURRENT OWNER OF TRACT 20

IN THIS EXAMPLE, OWNER OF TRACT 18 MUST EXCHANGE DEEDS WITH 7 NEIGHBORS. THE CONVEYANCES DO NOT HAVE TO OCCUR IN THE ORDER DESCRIBED ABOVE.

LEGEND

- DIRT ROADS
- OCCUPATION LINES
- DEED LINES
- TRACT 13 DEED LINES
- FINAL TRACT 13 LINES AFTER PROPERTY LINE ADJUSTMENTS



EXAMPLE OF OWNERSHIP PROBLEMS IN DUSTYAN ROAD NEIGHBORHOOD (7225, R10E, SEC 4)
 RESOLVING OCCUPATION LINES AND DEEDED LINES VIA PROPERTY LINE ADJUSTMENTS
 RESOURCES COLONY SUBDIVISIONS OFFICE SCALE: NONE DRAWN BY: M.A. DATE: 7/18/08
 6150 SE 27TH STREET, BETHLEHEM, OR 97102 TEL: 503-754-1100 FAX: 503-754-1101
 SHEET 4 OF 4
 U7/18/2008