

BEFORE THE COMPLIANCE HEARINGS OFFICER
for the
CLACKAMAS COUNTY BOARD OF COMMISSIONERS

CLACKAMAS COUNTY,

Petitioner-Respondent,

v.

KALUGA, LLC, and MAGDALA LLC,

Respondents-Appellants.

File No. V0035019

COMPLAINT (APPEAL OF DANGEROUS
BUILDING NOTICES AND ORDERS)

I, Caleb Huegel, Assistant County Counsel for Clackamas County, allege as follows:

1.

Respondents-Appellants' mailing address is: Aaron Shelley, Registered Agent, 29450 SE Lariat Lane, Boring, Oregon 97009.

2.

The address or location of the violations alleged in this Complaint is: 29450 and 29444 SE Lariat Lane, Boring, Oregon 97009, also known as T1S, R4, Section 31A, Tax Lots 01300, 01301, 01303, 01400, and 01401, which is in Clackamas County, Oregon.

3.

On or about April 17, 2024, Respondents-Appellants were provided notice that they were using their property in a manner that violated Chapter 9.01 of the Clackamas County Code (CCC), Code for the Abatement of Dangerous Buildings and Structures—specifically, CCC 9.01.100(A) to (G). This is a Priority 1 violation pursuant to the Clackamas County Violation Priorities.

4.

The Department initiating this proceeding is the Code Enforcement Section of the Department of Transportation and Development.

5.

Notice of the violations was given to Respondents-Appellants in the following manner: Copies of the dangerous building notices and orders for all affected structures were posted on the gate of the subject property on April 17, 2024. Copies of the notice documents are attached to the Statement of Proof filed in this matter as Exhibits BP. Copies of the notice documents were also sent by certified mail. Copies of the certified receipts are attached to the Statement of Proof filed in this matter as Exhibits BR.

6.

On April 29, 2024, Respondents-Appellants requested that a hearing be set in this matter. A copy of the appeal document is attached to this Complaint as Exhibit 1.

DATED this 6th day of June 2024.



Caleb Huegel
Assistant County Counsel
Clackamas County



Planning and Zoning
Department of Transportation and Development
 Development Services Building
 150 Beavercreek Road | Oregon City, OR 97045
 503-742-4500 | zoninginfo@clackamas.us
 www.clackamas.us/planning

STAFF USE ONLY	
Staff Initials:	File Number:

APPEAL FORM

Appeal Fee: \$250.00

File number being appealed:	Date of decision being appealed: 04/17/2024	Decision being appealed: <input type="checkbox"/> Approval <input checked="" type="checkbox"/> Denial
Name of original applicant: Building Official of Clackamas County		
Original applicant's request: Notice of Orders of Dangerous Buildings and Notices to Vacate		
Appellant's name: Kaluga, LLC and Magdala LLC by Aaron Shelley (Mount Hood Center Director of Operations)		
Appellant's mailing address: 29450 SE Lariat Lane, Boring, Oregon 97009		
Appellant's phone: (503) 841-8869	Appellant's email: aaron@mthoodcenter.com	
Reason(s) for appeal: Please see attached Appeal of the County's Notices and Orders to Vacate Property Located at 29450 SE Lariat Lane, Boring, Oregon.		

To be completed only when appeal is filed by a Community Planning Organization (CPO):		
Date of CPO meeting authorizing appeal:	Type of CPO meeting held: <input type="checkbox"/> General <input type="checkbox"/> Board <input type="checkbox"/> Other: _____	
Votes on this appeal: _____ in Favor _____ Opposed _____ Abstentions		

I hereby certify that the statements contained above are in all respects true and correct to the best of my knowledge.	
Appellant's signature: Aaron Shelley <small>Digitally signed by Aaron Shelley Date: 2024.04.29 13:35:57 -07'00'</small>	Date: 04/29/2024

An appeal of the Planning Director's decision or any condition of approval on a Type II application causes the application to be reviewed *de novo* by the Land Use Hearings Officer or, in the case of an application for an interpretation of the Comprehensive Plan, by the Planning Commission. In a *de novo* proceeding, all criteria and standards relevant to the application will be reviewed. Conditions of approval may be modified or new conditions added. An appeal of the Planning Commission's decision on an interpretation of the Comprehensive Plan causes the application to be reviewed *de novo* by the Board of County Commissioners. An appeal of the Land Use Hearings Officer's decision on an application for an interpretation of the Zoning and Development Ordinance causes the application to be reviewed *de novo* by the Board of County Commissioners, if the Board chooses to review the decision.

REFUND POLICY: If a submitted appeal request is withdrawn before the appeal hearing is publicly noticed, 75% of the appeal fee paid will be refunded. If a submitted appeal request is withdrawn *after* the appeal hearing is publicly noticed, but *before* the appeal hearing is held, 50% of the appeal fee paid will be refunded. No refund will be given after the appeal hearing is held *unless* the appellant prevails, in which case the entire appeal fee paid will be refunded.

**BEFORE THE CODE COMPLIANCE HEARINGS OFFICER
OF
CLACKAMAS COUNTY**

Kaluga, LLC and Magdala LLC
Appellants.

**Appeal of the Notices and
Orders to Vacate Property
Located at 29450 SE Lariat Lane,
Boring, Oregon issued by
Clackamas County pursuant to
Chapter 9.01 of the Clackamas
County Code.**

I.

THE LEGAL INTEREST OF THE APPELLANTS

Appellant Kaluga, LLC (“Kaluga”) is the owner of the property located at 29450 SE Lariat Lane, Boring, Oregon 97009 (“Property”) that is subject to Clackamas County’s (“County”) Notices and Orders to Vacate the Property that were issued on April 17, 2024, pursuant to Chapter 9.01 of the Clackamas County Code. The Property is home to the Mount Hood Center. Appellant Magdala LLC (“Magdala”) operates the Mount Hood Center.

II.

**NATURE OF THE SPECIFIC ORDERS OR ACTIONS PROTESTED
BY APPELLANTS**

On April 17, 2024, the County issued five (5) Notices and Orders of Dangerous Buildings (“Buildings”) and Notices to Vacate certain of the

Buildings located on the Property pursuant to Chapter 9.01 of the Clackamas County Code as follows:

A. Arena Structure.

The County determined that the Arena Structure was a dangerous Building for the following reasons:

1. The use of the Arena Structure exceeds its occupancy rating. CCC Section 9.01.100(C).
2. The use and occupation of the Arena Structure is contrary to the manner in which it was approved. CCC Section 9.01.100(C).
3. The Arena Structure has not received proper review, permits and inspections for the activities and uses occurring within. CCC Section 9.01.100(E).
4. The Arena Structure is an unsafe building due to improper occupancy and inadequate means of egress in violation of the Oregon Fire Code. CCC 9.01.100(F).
5. Electrical, plumbing, heating, ventilation systems have been installed without issued permits and all required inspections. CCC Section 9.02.040(A-D); CCC 9.01.100(G).

B. West Barn Building.

The County determined that the West Barn was a dangerous Building for the following reasons:

1. The use and occupation of the structure as a commercial venue for parties and events has been determined to be

contrary to the manner in which it was approved (a storage building). CCC Section 9.01.100(C).

2. The West Barn Building has not received proper review, permits and inspections for the activities and uses occurring within the building. CCC Section 9.01.100(E).
3. Electrical, plumbing, heating, ventilation systems have been installed without all issued permits and required inspections. CCC Section 9.02.040(A-D); CCC Section 9.01.100(G).

C. Lookout Deck-Cargo Container Structure.

The County determined that the Lookout Deck-Cargo Container Structure was a dangerous Structure for the following reasons:

1. The structure has not received proper review, permits and inspections for the activities and related uses. CCC Section 9.01.100(E).
2. Electrical has been installed without issued permits and all required inspections in violation of CCC Section 9.02.040(A, D). CCC Section 9.01.100(G).

D. Viewing Platform Building Structure.

The County determined that the Viewing Platform Building Structure was a dangerous Structure for the following reasons:

1. The use and occupation of the structure has been determined to be in violation of Clackamas County Building Code 9.02.040(A) by failing to obtain the required permits and inspections necessary for the current uses of the structure. CCC Section 9.01.100(C).

2. The structure has not received proper review, permits and inspections for the activities and uses of the Structure. CCC Section 9.01.100(E).

E. Trestle Bridge Structure.

The County determined that the Trestle Bridge Structure was a dangerous Structure for the following reasons:

1. The use and occupation of the structure has been determined to be in violation of the Clackamas County Building Code 9.02.040(A) by failing to obtain required permits and inspections necessary for the current uses. CCC Section 9.01.100(C).
2. The structure has not received proper review, permits and inspections for the activities and uses. CCC Section 9.01.100(E).

F. Greenhouse Structure.

The County determined that the Greenhouse Structure was a dangerous Structure for the following reasons:

1. The use and occupation of the structure has been determined to be in violation of the Clackamas County Building Code 9.02.040(A-D) by failing to obtain required permits and inspections necessary for the current uses. CCC Section 9.01.100(C).
2. The structure has not received proper review, permits and inspections for the activities and uses. CCC Section 9.01.100(E).

III.

MATERIAL FACTS AND ARGUMENTS SUPPORTING APPELLANTS' APPEAL

Appellants Kaluga and Magdala (collectively, "Appellants") own and operate an equestrian facility in Boring, Oregon. Appellant Kaluga owns the Mount Hood Center, an equestrian facility located at 29450 SE Lariat Lane in Boring, Oregon (the "Property"). Appellant Magdala operates the Mount Hood Center.

Appellant Kaluga purchased the Property on July 5, 2018. The Property is an approximate 16-acre parcel located in rural Boring adjacent to U.S. Route 26. On the Property is: (1) an approximately 95,000-square-foot Event Center structure ("Main Building") with equestrian stables, 160 stalls, and two riding arenas; (2) an approximately 5,000-square-foot Accessory Building ("West Building") with space for meetings in support of equestrian activities; (3) a home used by the property manager and his family; (4) an outdoor riding course (the "Trail Course"); and (5) a small stormwater pond ("Water Feature").

Clackamas County approved a Conditional Use Permit for the Property in 1982 ("CUP"). Under the CUP, Appellants may use the Property

and the aforementioned improvements for: (1) a riding stable and arena; (2) boarding up to 190 horses; (3) hosting up to approximately 10 horse shows per year with 30 to 300 horses; and (4) other uses incidental to the operation of a riding stable and arena, including a snack shop and tack shop. A tack shop is an equestrian supply store. The CUP places no restrictions on the number or type of equine-related activities that may occur on the property.

Pursuant to the CUP, the Property has long hosted activities and events such as horse shows, rodeos, barrel racing, team penning, riding lessons, riding clinics, trail riding, camps, and leisure riding, as well as the food, beverage, and other ancillary and accessory services that accompany such events. When Appellant Kaluga purchased the property in 2018, some combination of these activities had been ongoing for at least 36 years.

When Appellant Kaluga acquired the Property, it had fallen into severe disrepair. In the Main Building, the gates on many of the 160 horse stalls were inoperable; the indoor riding arena's wooden bleachers were decaying; the electrical and plumbing systems were outdated and not to code; and several aspects of the restrooms and commercial kitchen required substantial work, including upgrades needed to comply with the Americans with Disabilities Act ("ADA") and County building and plumbing codes.

Similarly, in the West Building, insufficient points of ingress and egress created safety issues and the only restroom was ADA non-compliant.

As will be explained in more detail at the hearing, Appellants expended approximately \$3.5 Million on planning, design, building, and legal expenses in pursuing all necessary building and trade permits with the County to: (1) cure any existing building code violations when Appellant Kaluga purchased the Property and (2) upgrade all of the facilities to improve the safety and functionality of the Main Building and West Building so that both structures could better support the uses authorized by the CUP.

Unfortunately, the County has not carried out its duties and responsibilities in the review of Appellants' building permit requests in a timely manner consistent with Chapter 9 of the Clackamas County Code. As described below, the County has approved some of Appellants' requests for building permits and inspections but has failed to act on others and is currently unlawfully withholding the issuance and approval of pending requests that would cure the Building Code violations alleged in the Notices and Orders.

The County has wrongfully failed to process these building permits on its erroneous "allegation" that Appellants must first obtain a

new or modified CUP because Appellants are in violation of its land use authorization under the 1982 CUP. Based on this erroneous “allegation”, it is the County’s position that it has the authority to withhold the processing of Appellants’ requested permits pursuant to Section 9.02.260 of the Clackamas County Code. The County is wrong.

Section 9.02.260 states that the Building Official may refuse to issue permits, and/or occupancy of completion certificates under the County’s Building Code if the use of the land on which a building or structure is used in violation of any County Ordinances:

The building official may refuse to issue permits, occupancy of completion certificates under this chapter if the parcel of land, or the use of the land on which the building, structure, or equipment is to be placed, altered, equipped or used is in violation of any Clackamas County Ordinance or State Building Code.

Section 9.02.260, however, does not grant the Building Official authority to withhold permits or inspections based upon “alleged” land use violations of the County’s Code. If the County “alleges” a zoning violation, the County’s Code grants a property owner the right to a hearing (and due process) before a final determination is made whether a violation exists.

Here, any zoning violations asserted by the County are simply “alleged” and not “adjudicated” under Chapter 2 of the Clackamas County Code.

Based on the foregoing, the County does not have the authority to withhold the processing of Appellants’ requested building permits based on “alleged” land use violations nor issue Notices and Orders to Vacate the Buildings on Appellants’ Property. But that is precisely what the County has done. Instead of pursuing a zoning enforcement action “alleging” a violation of the CUP using the procedures outlined in Chapter 2 of the County’s Code, the County has unlawfully withheld the review of requested building permits and shut down Appellants’ business.¹

Any “alleged” land use violation must be first “adjudicated” pursuant to the procedures set forth in Chapter 2 of the Clackamas County Code before the County Building Official can withhold the review and inspections associated with requested building permits. Under that

¹ It is important to note that any “allegation” by the County that Appellants’ use of its Property violates the 1982 CUP is false. It is not the scope of this Appeal to make that determination. That determination would be made in a separate proceeding should the County pursue an enforcement action pursuant to Chapter 2 of the Clackamas County Code. To date, the County has chosen not to take that route and instead has unlawfully withheld the review and approval of requested permits that would resolve the Notices and Orders to Vacate.

authority: (1) the County is required to issue a Citation of any alleged land use violation and serve the Citation on the property owner; (2) the property owner has the right to request a hearing before the Compliance Hearings Officer; (3) if a hearing is requested, the County is required to issue a Complaint and file it with the Hearings Compliance Officer; and (4) the Hearings Compliance Officer conducts a hearing regarding the Complaint and renders a decision “adjudicating” the alleged land use violation. Any party has the right of appeal to the Circuit Court via Writ of Review, or the Land Use Board of Appeals (“LUBA”) if the Compliance Hearings Officer renders a land use decision. Section 2.07.130 of the Clackamas County Code.

The foregoing County process ensures full due process for a property owner when the County asserts that an “alleged” land use violation exists. Without this due process, the County has no authority to withhold any of the requested building permits (under Chapter 9) on the basis of “unsubstantiated” and “unadjudicated” allegations asserted by County Code Enforcement. Without an official “adjudication” of any “alleged” land use violations, the County did not have the authority to impermissibly shut down Appellants’ business under the guise it could do so under Chapter 9 of the Clackamas County Code.

The County has failed to follow its own process, violated its own Code, and denied Appellants their due process. As a result, the County did not have authority to issue the Orders shutting down Appellants' business due to its own negligence or intentional actions causing Appellants irreparable harm and damage.

IV.

REASONS WHY THE COUNTY'S NOTICES AND ORDERS TO VACATE SHOULD BE REVERSED AND SET ASIDE

The County's Notices and Orders to Vacate the Property should be reversed and set aside by the Code Compliance Hearings Officer for the following reasons:

A. Arena Structure.

1. The use of the Arena Structure exceeds its occupancy rating. CCC Section 9.01.100(C).

Response: The Arena Structure does not exceed its occupancy rating. The County has not established an occupancy rating for the Arena Structure. Appellants retained a fire safety expert to evaluate and recommend the occupancy load for the Arena Structure. Appellants are in compliance with this recommended occupancy load. Appellants provided this information to the County. The County has not acted on this information nor established an occupancy rating for the Arena.

Therefore, it was unlawful for the County to use this reason as a basis to Order the Arena Structure to be Vacated.

2. The use and occupation of the Arena Structure is contrary to the manner in which it was approved. CCC Section 9.01.100(E).

Response: The use and occupation of the Arena Structure is consistent with the 1982 CUP. Any attempt by the County to use Chapter 9 to issue the Notices and Orders to Vacate the Arena Structure on the basis of an “alleged” land use violation without “adjudication” is unlawful as described above.

Therefore, it was unlawful for the County to use this reason as a basis to Order the Arena Structure to be Vacated.

3. The Arena Structure has not received proper review, permits and inspections for the activities and uses occurring within. CCC 9.01.100(F).

Response: The use and occupation of the Arena Structure is consistent with the 1982 CUP. Any attempt by the County to use Chapter 9 to issue the Notices and Orders to vacate the Arena Structure on the basis of an “alleged” land use violation without “adjudication” is unlawful as described above.

Therefore, it was unlawful for the County to use this reason as a basis to Order the Arena Structure to be Vacated.

4. The Arena Structure is an unsafe building due to improper occupancy and inadequate means of

egress in violation of the Oregon Fire Code. CCC 9.01.100(F).

Response: The claim of “improper occupancy” is addressed above. Further, the Arena Structure is in compliance with the Oregon Fire Code. The Fire Marshal inspected the Property in the Fall of 2023 and passed it. The Arena Structure has proper means of egress and is in compliance with the Oregon Fire Code.

Therefore, it was unlawful for the County to use this reason as a basis to Order the Arena Structure to be Vacated.

5. Electrical, plumbing, heating, ventilation systems have been installed without issued permits and all required inspections. CCC Section 9.02.040(A-D); CCC 9.01.100(G).

Response: The County has approved and inspected any electrical improvements to the Arena Structure on December 8, 2021 (Record # EM006121). Appellants did not request County approval for any plumbing, heating, or ventilation improvements for the Arena Structure nor constructed the same.

Therefore, it was unlawful for the County to use this reason as a basis to Order the Arena Structure to be Vacated.

B. West Barn Building.

1. The use and occupation of the structure as a commercial venue for parties and events has been determined to be contrary to the manner in which it

was approved (a storage building). CCC Section 9.01.100(C).

Response: Appellants are occupying the West Barn Building in a manner consistent with the 1982 CUP. The use and occupation of the West Barn Building is consistent with the 1982 CUP. Any attempt by the County to use Chapter 9 to issue the Notices and Orders to Vacate the West Barn Building on the basis of an “alleged” land use violation without “adjudication” is unlawful as described above.

The original 1982 CUP application did not propose that the West Building would be used for storage. Moreover, none of the findings of fact or conclusions supporting the CUP relied upon the use of the West Barn Building as storage to find compliance with any criteria.

Therefore, it was unlawful for the County to use this reason as a basis to Order the West Barn Building to be Vacated.

2. The West Barn Building has not received proper review, permits and inspections for the activities and uses occurring within the building. CCC Section 9.01.100(E).

Response: The County has already approved and inspected any improvements to the West Barn Building on October 8, 2019 (Record # B0101315).

Therefore, it was unlawful for the County to use this reason as a basis to Order the West Barn Building to be Vacated.

3. Electrical, plumbing, heating, ventilation systems have been installed without all issued permits and required inspections. CCC Section 9.01.100(G).

Response: The County has already approved and inspected any improvements to the West Barn Building on October 8, 2019 (Record # B0101315).

Therefore, it was unlawful for the County to use this reason as a basis to Order the West Barn Building to be Vacated.

C. Lookout Deck-Cargo Container Structure.

1. The structure has not received proper review, permits and inspections for the activities and related uses. CCC Section 9.01.100(E).

Response: Appellants submitted permits for this Structure on September 2, 2021. The County is withholding review, approval, and the necessary inspections due to its erroneous assertion that the use of the Lookout Deck-Cargo Container Structure violates the 1982 CUP.

Appellants are using and occupying the Lookout Deck-Cargo Container Structure in a manner consistent with the 1982 CUP. Any attempt by the County to use Chapter 9 to issue the Notices and Orders to vacate the Lookout Deck-Cargo Container Structure on the basis of an “alleged” land use violation without “adjudication” is unlawful as described above.

Therefore, it was unlawful for the County to use this reason as a basis to Order the Lookout Deck-Cargo Container Structure to be Vacated.

2. Electrical has been installed without issued permits and all required inspections in violation of CCC Section 9.02.040(A, D); CCC Section 9.01.100(G).

Response: All electrical has been installed and approved and inspected by the County for the Lookout Deck-Cargo Container Structure (Record # EM006121).

Therefore, it was unlawful for the County to use this reason as a basis to Order the Lookout Deck-Cargo Container Structure to be vacated.

D. Viewing Platform Building Structure.

1. The use and occupation of the Viewing Platform Building Structure has been determined to be in violation of Clackamas County Building Code 9.02.040(A) by failing to obtain the required permits and inspections necessary for the current uses of the structure. CCC Section 9.01.100(C).

Response: Appellants are using and occupying the Viewing Platform Building Structure in a manner consistent with the 1982 CUP. Any attempt by the County to use Chapter 9 to issue the Notices and Orders to vacate the Viewing Platform Building Structure on the basis of an “alleged” land use violation without “adjudication” under the County’s process is unlawful as described above.

Therefore, it was unlawful for the County to use this reason as a basis to Order the Viewing Platform Building Structure to be vacated.

2. The structure has not received proper review, permits and inspections for the activities and uses of the Structure. CCC Section 9.01.100(E).

Response: Appellants have submitted the necessary requests regarding this issue to the County on September 2, 2021.

The County is withholding review, approval, and the necessary inspections due to its erroneous assertion and “allegation” that the use of the Viewing Platform Building Structure violates the 1982 CUP. Appellants are using and occupying the Viewing Platform Building Structure in a manner consistent with the 1982 CUP. Any attempt by the County to use Chapter 9 to issue the Notices and Orders to vacate the Viewing Platform Building Structure on the basis of an “alleged” land use violation without “adjudication” is unlawful as described above.

Therefore, it was unlawful for the County to use this reason as a basis to Order the Viewing Platform Building Structure to be vacated.

E. Trestle Bridge Structure.

1. The use and occupation of the structure has been determined to be in violation of the Clackamas County Building Code 9.02.040(A) by failing to obtain required permits and inspections necessary for the current uses. CCC Section 9.01.100(C).

Response: Appellants have submitted the necessary requests regarding this issue to the County on September 2, 2021.

The County is withholding review, approval, and the necessary inspections due to its erroneous assertion and “allegation” that the use of the Trestle Bridge Structure violates the 1982 CUP. Appellants are using and occupying the Trestle Bridge Structure in a manner consistent with the 1982 CUP. Any attempt by the County to use Chapter 9 to issue the Notices and Orders to vacate the Trestle Bridge Structure on the basis of an “alleged” land use violation without “adjudication” is unlawful as described above.

Therefore, it was unlawful for the County to use this reason as a basis to Order the Trestle Bridge Structure to be Vacated.

2. The structure has not received proper review, permits and inspections for the activities and uses. CCC Section 9.01.100(E).

Response: Appellants have submitted the necessary requests regarding this issue to the County on September 2, 2021.

The County is withholding review, approval, and the necessary inspections due to its erroneous assertion that the use of the Trestle Bridge violates the 1982 CUP. Appellants are using and occupying the Trestle Bridge Structure in a manner consistent with the 1982 CUP. Any attempt by the County to use Chapter 9 to issue the Notices and Orders to vacate the Trestle Bridge Structure on the basis of an “alleged” land use violation without “adjudication” is unlawful as described above.

Therefore, it was unlawful for the County to use this reason as a basis to Order the Trestle Bridge Structure to be Vacated.

F. The Greenhouse Structure.

1. The use and occupation of the structure has been determined to be in violation of the Clackamas County Building Code 9.02.040(A-D) by failing to obtain required permits and inspections necessary for the current uses. CCC Section 9.01.100(C).

Response: Appellants have submitted the necessary requests regarding this issue to the County on September 2, 2021.

The County is withholding review, approval, and the necessary inspections due to its erroneous assertion that the use of the Greenhouse Building Structure violates the 1982 CUP. Appellants are using and occupying the Greenhouse Structure in a manner consistent with the 1982 CUP. Any attempt by the County to use Chapter 9 to issue the Notices and Orders to vacate the Greenhouse Structure on the basis of an “alleged” land use violation without “adjudication” is unlawful as described above.

Therefore, it was unlawful for the County to use this reason as a basis to Order the Greenhouse Structure to be Vacated.

2. The structure has not received proper review, permits and inspections for the activities and uses. CCC Section 9.01.100(E).

Response: Appellants have submitted the necessary requests regarding this issue to the County on September 2, 2021.

The County is withholding review, approval, and the necessary inspections due to its erroneous allegation that the use of the Greenhouse Building Structure violates the 1982 CUP. Any attempt by the County to use Chapter 9 to issue the Notices and Orders to vacate the Greenhouse Structure on the basis of an “alleged” land use violation without “adjudication” is unlawful as described above.

Therefore, it was unlawful for the County to use this reason as a basis to Order the Greenhouse Structure to be Vacated.

V.

RELIEF REQUESTED BY APPELLANTS

Based on the foregoing, Appellants respectfully request the Code Compliance Hearings Officer to reverse and set aside the County’s Notices and Orders to Vacate the Property. Appellants further respectfully request the Code Compliance Hearings Officer to schedule an expedited hearing regarding this Appeal because the County is asserting that Appellants may not use any of the subject structures until the Notices and Orders to Vacate are reversed and set aside.

VI.

DECLARATION BY APPELLANTS

The sworn Declaration of Aaron Shelley, Director of Operations of the Mount Hood Center (on behalf of Appellant Magdala), is attached to this Appeal verifying the truth of the matters stated herein.

DATED this 29th day of April 2024.

KALUGA, LLC
MAGDALA LLC

By: /s/ Aaron Shelley
Aaron Shelley
Director of Operations of Mount
Hood Center
Appellants

Submitted by:

HATHAWAY LARSON LLP

By: /s/ Gregory S. Hathaway
Gregory S. Hathaway, OSB No. 731240
*Of Attorneys for Appellants Kaluga, LLC
and Magdala LLC*

**BEFORE THE CODE COMPLIANCE HEARINGS OFFICER
OF
CLACKAMAS COUNTY**

**Kaluga, LLC and Magdala LLC
Appellants.**


Declaration of Aaron Shelley in Support of the Appeal of the Notices and Orders to Vacate Property Located at 29450 SE Lariat Lane, Boring, Oregon issued by Clackamas County pursuant to Chapter 9.01 of the Clackamas County Code.

I, Aaron Shelley, under penalty of perjury under the laws of the state of Oregon and the United States of America, declare as follows:

1. I certify that I am over 18 years of age and competent to make this declaration.
2. I am the Director of Operations of the Mount Hood Center, which is located at 29450 SE Lariat Lane, Boring, Oregon. Mount Hood Center is owned by Kaluga, LLC and operated by Magdala LLC.
3. I make this Declaration in support of Appellants' Appeal of the Notices and Orders to Vacate Property Located at 29450 SE Lariat Lane, Boring, Oregon issued by Clackamas County and verify the truth of the matters stated therein.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for the use as evidence in court and is subject to penalty for perjury.

DATED this 29th day of April 2024.



Aaron Shelley

BEFORE THE COMPLIANCE HEARINGS OFFICER
for the
CLACKAMAS COUNTY BOARD OF COMMISSIONERS

CLACKAMAS COUNTY,

Petitioner-Respondent,

v.

KALUGA, LLC, and MAGDALA LLC,

Respondents-Appellants.

File No. V0035019

STATEMENT OF PROOF (APPEAL OF
DANGEROUS BUILDING NOTICES AND
ORDERS)

History and Exhibits:

Exhibits: E, BK The subject property has an open violation file, V0035019, related to Building Code and Zoning violations. Compliance has not been achieved. Clackamas County was notified of a concert that was held on the subject property on March 16, 2024.

Exhibits: BL, BM Clackamas County received reports from the Clackamas Fire District Fire Marshal Shawn Olson and a Clackamas County Sheriff's Office report regarding the March 16, 2024, event.

Exhibits: BO Pages 1-10 of 28, BP Pages 1-3 of 29 **Arena Structure**
This structure was originally constructed as an equestrian center. It has been the site of large assembly uses that exceed the occupancy rating. Its use and occupancy are contrary to the manner in which it was approved. CCC 9.01.100(C).
Electrical, plumbing, heating, and ventilation systems have been installed without required permits and inspections, in violation of CCC 9.02.040(A) to (D). CCC 9.01.100(G).
The structure has not received proper review, permits, and inspections for the activities and uses occurring within. CCC 9.01.100(E).
The structure is an unsafe building due to improper occupancy and inadequate means of egress. In particular, the March 16, 2024, event was found to create unsafe conditions and overcrowding. Violations of Oregon Fire Code (OFC) 1003.6, Means of Egress Continuity; OFC 1032.1, Maintenance of the Means of Egress; OFC 109.6, Overcrowding; OFC 114.1.1, Unsafe Conditions; OFC 907.2.1, Group A; and OFC 907.2.1.1, System Initiation in Group A Occupancies with an Occupant Load of 1,000 or More. CCC 9.01.100(F).

West Barn Building

Exhibits:
BO Pages 11-
15 of 28,
BP Pages 16-
18 of 29

This structure was originally built in 1973 as a hay storage warehouse building. Its use and occupancy as a commercial venue for parties and events, and as a jiu jitsu studio, are contrary to the manner in which it was approved, creating a life and fire safety hazard to its occupants. CCC 9.01.100(C).

The structure has not received proper review, permits, and inspections for the activities and uses occurring within. CCC 9.01.100(E).

Electrical, plumbing, heating, and ventilation systems have been installed without required permits and inspections, in violation of CCC 9.02.040(A) to (D). CCC 9.01.100(G).

Greenhouse Building

Exhibits:
BO Pages 16-
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BP Pages 4-6
of 29

This structure was constructed without required permits or inspections, creating a life and fire safety hazard to its occupants. CCC 9.01.100(C).

The structure has not received proper review, permits, and inspections for the activities and uses, such as weddings and other commercial events, occurring within. CCC 9.01.100(E).

The structure is being used for Group A (Assembly) occupancy. It is an unsafe building due to improper occupancy and inadequate means of egress, in violation of OFC 114.1.1, Unsafe Conditions. CCC 9.01.100(F).

Electrical, plumbing, heating, and ventilation systems have been installed without required permits and inspections, in violation of CCC 9.02.040(A) to (D). CCC 9.01.100(G).

Documents for permitting a greenhouse with an insect habitat were submitted on or about September 2, 2021. The permit, B0494021, has not been issued. The County has not received information required to complete the permit review. In May 2024, a submittal was attempted by email to convert the structure into a wedding venue. The applicant was informed that the submittal must be made through the County's online system.

Lookout Deck-Cargo Container Structure

Exhibits:
BO Pages 22-
23 of 28,
BP Pages 7-9
of 29

This structure was installed and built-out without required permits or inspections. It has not received proper review, permits, and inspections for its activities and uses. CCC 9.01.100(E).

Electrical has been installed without required permits and inspections, in violation of CCC 9.02.040(A) and (D). CCC 9.01.100(G).

Documents for permitting a "Container, Viewing Platform" were submitted on or about September 2, 2021. The permit, B0494521, has not been issued. The County has not received information required to complete the permit review.

Viewing Platform Structure

Exhibits:
BO Pages 27-
28 of 28,
BP Pages 13-
15 of 29

This structure was built prior to October 2019 without required permits or inspections, creating a life and fire safety hazard to its users. CCC 9.01.100(C).
The structure has not received proper review, permits, and inspections for its activities and uses. CCC 9.01.100(E). Documents for permitting the structure were submitted on or about September 2, 2021. The permit, B0494021, has not been issued. The County has not received information required to complete the permit review.

Trestle Bridge Structure

Exhibits:
BO Pages 24-
26 of 28,
BP Pages 10-
12 of 29

This structure was built prior to October 2019 without required permits or inspections, creating a life and fire safety hazard to its users. CCC 9.01.100(C).
The structure has not received proper review, permits, and inspections for its activities and uses. CCC 9.01.100(E). Documents for permitting the structure were submitted on or about September 2, 2021. The permit, B0494021, has not been issued. The County has not received information required to complete the permit review.

Structural Electrical Requirements

Exhibit:
BT

Documents for an electrical master permit, EM006121, were submitted on April 7, 2021, for work that has occurred in the structures and on the grounds. No payment was made for the permit until February 1, 2023. One inspection occurred on December 7, 2021. However, there is no evidence of cover inspections and no further inspections have been made, including minimum annual electrical safety inspections. Some of the work noted in the log for the permit is electrical work that does not qualify for the electrical master permit program, such as installation in a new building shell and installation in connection with changing the type of use or occupancy classification.

Declaration of Posting and Certified mailings

Exhibits:
BQ, BP Pages
19-29 of 29

Dangerous building notices and orders for these structures were posted on the closed gate of the subject property on April 17, 2024. Copies of the dangerous building notices and orders were sent by certified mail to Appellants and all interested parties. No copies of the notices were returned by mail.