N. Ordinance PA 921: re-enacting RCP Policy 21 (Error & Omissions).

REEL 129 PAGE 1173

FILE # PA 04-5276
EXHIBIT # 35

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE PA 921

IN THE MATTER OF AMENDING THE POLICIES ELEMENT OF THE RURAL COMPREHENSIVE PLAN TO REPEAL AND RE-ENACT LAND USE PLANNING POLICY 21 ("ERRORS & OMISSIONS")

WHEREAS, the Board of County Commissioners of Lane County, through enactment of Ordinance PA 883, has adopted a Policies element of the Rural Comprehensive Plan, such Policies having jurisdiction within the jurisdiction of the Rural Comprehensive Plan; and

WHEREAS, a procedure exists in Lane Code Chapter 16.400, as adopted by Ordinances 1-84 and 11-84, for amendment of provisions of the Rural Comprehensive Plan; and

WHEREAS, Policy 21, Land Use Planning (Goal 2) of the Policies element is no longer in effect due to a termination date for requests being a part of the policy, and that termination date now having passed; and

WHEREAS, an amendment request has been initiated by the County to revise and renew the provisions of Policy 21, Land Use Planning (Goal 2) of the Policies element; and

WHEREAS, the West Lane Planning Commission, in public hearing of March 19, 1986, and the Lane County Planning Commission, in public hearing of April 1, 1986, considered the above-described Policy revision and each recommended approval of it, and these decisions have been reported to the Board; and

WHEREAS, evidence exists in the record indicating that the amendment meets the requirements of Lane Code 16.400 and the requirements of applicable local and State Law; and

WHEREAS, the Board of County Commissioners has conducted public hearings and is now ready to take action; NOW

THEREFORE, the Board of County Commissioners of Lane County, Oregon, ORDAINS AS FOLLOWS:

1. Policy 21, Land Use Planning (Goal 2) of the Rural Comprehensive Plan Policies element, as written prior to this action, is Repealed (text of Policy on attached Exhibit "A").

2. Revised Policy 21, Land Use Planning (Goal 2) of the RCP Policies element, as described and written in attached Exhibit "B", is Adopted.

FURTHER, although not a part of this Ordinance, the Board of County Commissioners adopts Findings as set forth in Exhibit "C" attached, in support of this action.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not effect the validity of the remaining portions hereof.

ENACTED this 10th day of September, 1986.

APPROVED AS TO FORM
DATE 8/19/86
OFFICE OF LEGAL COUNSEL

Chuck Ivey, Chairperson
Lane County Board of Commissioners

Destination Resorts may be developed subject to the following:

a. Satisfaction of Lane County Plan Amendment requirements, including, where applicable, the fulfillment of LCDC Goal Exception requirements;
b. Compliance with the provisions of the Lane County "Destination Resort" zoning district.

Destination Resort designations and zoning shall be considered only on a case-by-case basis, and may be evaluated concurrently. No designations or zoning shall occur in the absence of a specific application which addresses the criteria stated above.

20. CPR Process. Lane County recognizes that the legislative process does not allow for time-consuming scrutiny of individual requests, yet the County also recognizes that there may be substantial merit to numerous CPR requests.
   a. After adoption of the Comprehensive Plan, all citizens who filed a CPR are to be advised in writing of the final action thereon.
   b. The County shall advise those who filed requests pursuant to the nonresource or marginal lands policies that they may request in writing further review of their request. Supplemental information may be submitted within 30 days of the date of the letter specified in 20(a) above. Commencing in May 1984, the Planning Commissions will review each request with the CPR information previously submitted. For those requests where all applicable criteria and supporting information were submitted, the Planning Commission will initiate a legislative plan amendment/zone change. All others will be advised to follow the quasi-judicial process if they desire a change in their land use designation.

OLD POLICY

21. Errors or Omissions. Between March 2, 1984 and June 30, 1985, citizens who identify an error in plan or zone designation, as set forth below, are entitled to the County initiating correction, either quasi-judicial or legislative, as appropriate.
   a. Identified plan designation/zone district application inconsistency.
   b. Identified failure of plan and zone to recognize existing use on March 2, 1984.
   c. Identified failure to zone F-2, where maps used by staff to designate F-1 zone did not display actual existing legal lots adjacent to the subject property, and had the actual parcelization pattern been available to County staff, the Goal 4 policies would have dictated the F-2 zone.

22. Sites considered "significant" in terms of OAR 660-16-000 through 660-16-025 but requiring that the Goal #5 ESEE consequences analysis process be delayed (the "1B" option) shall be protected by Lane County through the application of interim protective measures. Such interim protective measures shall be considered and applied at the beginning of the plan refinement process for the "significant" sites and after sufficient information is available regarding the location, quality and quantity of the "significant" sites.

23. Unassigned.

24. A cluster subdivision, with the following exceptions, shall be deemed appropriate to a rural area when the criteria below are satisfied.

EXHIBIT "B" ORDINANCE PA 921
(New Policy 21)

21. ERRORS AND OMISSIONS

A. Intent. Where affected landowners and County officials clearly identify an error or omission in the land use designations and/or zoning classifications within the jurisdictional area of the Rural Comprehensive Plan and pursuant to this Policy, the County shall initiate corrective action with no processing fee being charged to the applicant.

B. Procedure. Corrective action shall take the form of amendments to the RCP and/or rezonings of affected property only. RCP Policy or Lane Code changes are not authorized by this Policy. Requests for corrective action initiated by agents for propertyowners must be accompanied by written consent of the landowner. Requests will, upon receipt, be screened by County staff to determine compliance with the terms of this Policy. Qualifying requests will be brought in groups before appropriate Planning Commission and the Board of County Commissioners for hearing and action. The County is not compelled to adopt a requested change only upon the basis of it qualifying for consideration herein. Requests will be considered no more often than twice yearly, and shall be processed as "legislative" RCP amendments/rezonings.

D. Definitions. An "error" or "omission" shall be defined as falling within one or more of the following categories:

(1) Absense of RCP land use designation and/or zoning district on the affected property;

(2) Inappropriate F-1 zoning, where the criteria of RCP Forest Land Policy 19(c) indicate that F-2 zoning is more suitable;

(3) Based on the guidelines found in RCP "Working Paper: Developed & Committed Lands" (August 1983), qualification of the property for a Developed and Committed Exception to one or more LCDC Goals, rather than the RCP designation/zone currently applied;

(4) Failure of the RCP designation/zone to recognize a lawful land use activity or development upon an affected property as of September 13, 1984. with such activity or development being represented by substantial improvements to or uses of the property at that time.

(5) Inappropriate zoning within an adopted Developed & Committed Exception area based on an evaluation of past zoning, parcel size, environmental limitations and other similiar factors.

"Affected property" is the property of the applicant and other properties which may be deemed appropriate for change by the County if integral to the corrective action.

E. Limitations. All requested corrective actions must be available within the policy and regulatory structure of the RCP, and must comply with current applications of LCDC Statewide Planning Goals, OAR's and other state law. New land use designations or zones are not to be created by this Policy. Documentation of the error or omission is the responsibility of the applicant, and the County may require supplementary documentation. Denial of an error and omission request by the County does not foreclose subsequent application, for a fee, for quasi-judicial RCP or zoning change. Duplicate requests will not be considered pursuant to this Policy. Requests for Marginal or NonResource Land RCP designations are exempt from this Policy.

F. Timing. This Policy shall be effective through December 31, 1989.

EXHIBIT "C" ORDINANCE PA 921

FINDINGS IN SUPPORT OF ADOPTION OF ORDINANCE PA 921

The Board of County Commissioners of Lane County, Oregon, makes the following Findings in support of adoption of this Ordinance:

1. At the time of adoption of the Rural Comprehensive Plan in February, 1984, a Policy was part of that Plan, such Policy being known as "errors or omissions" and identified as Policy 21, Land Use Planning (Goal 2) section, RCP Policies element. The intent of the Policy was to provide a mechanism for citizens of the County to petition the County for relief where it was documented, to the satisfaction of the Board, that the County had erred in placing RCP land use designations and/or zoning districts on the property of these citizens.

2. In September, 1984, the Rural Comprehensive Plan, including the Policies element which itself included Land Use Planning Policy 21, was reviewed and acknowledged by the state Land Conservation & Development Commission.

3. The Policy as it appears in the Policies element requires that applications for relief terminate as of June 30, 1985. Between February 1984 and the later date, about 300 requests for relief were received by the County. Of these, about 80 were determined by the County to meet the criteria set forth in the Policy.

4. In the body of Ordinances PA 893, PA 903 and PA 911, duly adopted by the County, these qualifying changes were made to the RCP and/or implementing zones. All changes so made were required to comply with state and local regulatations, including post-Acknowledgement review by LCDC staff. In the few instances where LCDC staff required changes to be made to individual requests, in order to assure compliance with state regulations, such changes were made. No request was exempted from these requirements.

5. Since June 30, 1985, County Commissioners, County Planning Commission members and County staff have received numerous requests for relief pursuant to the County's lapsed "errors or omissions" procedure. Evidence thus exists that there is a need for a renewal of the Policy.

6. Renewal of the Policy, and thus the process, will continue to make available to County citizens the remedial procedure desired by the Board in its action on the Rural Comprehensive Plan. A renewed Policy will also continue to require that any Plan amendments or rezonings comply with all applicable state and local laws and regulations.

7. In essence, renewed Policy 21 is merely a vehicle for providing equitable resolution, without undue expense to the petitioner, for errors in Plan designations and/or zoning designations, clearly attributable to the County at the time of Plan drafting, adoption and acknowledgement. It is the intent of the Board, as expressed by the Policy, that the Plan and its implementing zoning be made more accurate and thus better serve the citizens of the County.

FILE # PA 644-5
EXHIBIT # 13 (UPR) REC 1C3 PAGE 110
8-17-04

EXHIBIT # E

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

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FILED
AT ... M
ORDINANCE NO. 10-86
DEC 17 1985
County Clerk
BY Stephanie Linden

IN THE MATTER OF AMENDING CHAPTER 13 OF LANE CODE TO ADOPT DEFINITIONS WHICH ARE CONSISTENT WITH CHANGES TO ORS CHS. 92 AND 215 MADE BY THE 1985 OREGON LEGISLATURE, ADOPT A SEVERABILITY CLAUSE AND DECLARE AN EMERGENCY

WHEREAS, as a result of HB 2381, which was adopted during the 1985 Legislative Session, certain amendments were made to the definitions contained in ORS Chs. 92 and 215; and

WHEREAS, ORS 215.110 provides that the Board of Commissioners may, from time to time, amend its planning, zoning and subdivision ordinances; and

WHEREAS, the Lane County Planning Commission and West Lane Planning Commission have held a hearing on this matter on August 19, 1985; and

WHEREAS, the Board has held a hearing on this matter and desires to amend Lane Code Chapter 13 to comply with changes made by HB 2381 to ORS Chs. 92 and 215; now, therefore,

The Board of County Commissioners of Lane County ordains as follows:

Chapter 13 of Lane Code is hereby amended by removing and substituting the following pages:

REMOVE THESE PAGES	INSERT THESE PAGES
13.010 - 13.010 to 13.010 - 13.050(1), i.e. 13-2 to 13-4 (a total of three pages)	13.010 - 13.010 13.010 - 13.050(1), i.e. 13-2 to 13-4 (a total of three pages)

Said pages are attached hereto and incorporated herein by reference. The purpose of these substitutions is to adopt definitions which are consistent with changes to ORS Chs. 92 and 215 made in 1985 by the Oregon Legislature, adopt a severability clause and declare an emergency.

The provisions repealed by this Ordinance remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

cnbj0636

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

While not part of this Ordinance, we adopt the attached Exhibit "A" as Findings in support of this decision.

An emergency is hereby declared to exist and this Ordinance, being enacted by the Board in the exercise of its police power for the purpose of meeting such emergency and for the immediate preservation of the public peace, health and safety, shall take effect immediately.

Enacted this 10th day of September, 1986.

Chair, Lane County Board of Commissioners

Hannah Bradford

Recording Secretary for this Meeting of the Board

...TO FORM

8-12-86

...County

...SOL

2 - IN THE MATTER OF AMENDING CHAPTER 13 OF LANE CODE TO ADOPT DEFINITIONS WHICH ARE CONSISTENT WITH CHANGES TO ORS CHS. 92 AND 215 MADE BY THE 1985 OREGON LEGISLATURE, ADOPT A SEVERABILITY CLAUSE AND DECLARE AN EMERGENCY

cnbj0636

ownership and which are intervened by a street (local access-public, County, State or Federal street) shall not be considered contiguous.

Department. The Department of Public Works.

Depth. The horizontal distance between the front and rear boundary lines measured in the mean direction of the side boundary lines.

Director. "Within the Department of Public Works, the Director of the Planning Division or the Director's duly appointed representative."

Flood or Flooding. A general or temporary condition of partial or complete inundation of normally dry land areas from the inland or tidal waters from any source.

Floorplain. A physical geographic term describing any land area susceptible to being inundated by water from any source.

Floodway, Regulatory. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the waters of a base flood without cumulatively increasing the water surface elevation.

Improvement Agreement. An agreement that under prescribed circumstances may be used in lieu of required improvements of a performance agreement. It is a written agreement that is executed between the County and a developer, in a form improved by the Board of County Commissioners, in which the developer agrees to sign at a time any and all petitions, consents, etc., and all other documents necessary to improve an abutting road or other required improvements to County standards and to waive all rights or remonstrances against such improvements, in exchange for which the County agrees that the execution of the impovement agreement will be deemed to be in compliance with the improvement requirements of the Code.

Lot. A unit of land that is created by a subdivision of land.

Map, Partition. A final diagram and other documentation relating to a major or minor partition.

Panhandle. A narrow extension of a tract, 60 feet or less in width, which is used as access to the main portion of the tract.

Parcel.

(1) Includes a unit of land created:

(a) By partitioning land as defined in Lane Code 13.010.

(b) In compliance with all applicable plannng, zoning and partitioning ordinances and regulations; or

(c) By deed or land sales contract if there are no applicable planning, zoning or partitioning ordinances or regulations.

(2) It does not include a unit of land created solely to establish a separate tax account.

Partition. Either an act of partitioning land or an area or tract of land partitioned. Partitions shall be divided into the following two types:

(1) Major Partitions. A partition which includes the creation of a road.

(2) Minor Partition. A partition that does not include the creation of any road.

Partition Land. To divide land into two or three parcels of land within a calendar year but does not include:

(1) A division of land resulting from a lien foreclosure, foreclosure or a recorded contract for the sale of real property or the creation of cemetery lots; or

(2) An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance.

Performance Agreement. A written agreement executed by a subdivider divider or partitioner in a form approved by the Board and accompanied by a security also approved by the Board. The security shall be of sufficient amount to ensure the faithful performance and completion of all required improvements in a specified period of time.

Plat. A final diagram and other documents relating to a subdivision.

Road. The entire right-of-way of any public or private way that provides vehicular ingress and egress from property or provides travel between places by vehicles.

Sewerage Facility or Sewage Facility. The sewers, drains, treatment and disposal works and other facilities useful or necessary in the collection, treatment or disposal of sewage, industrial waste, garbage or other wastes.

(1) Sewerage Facility, Community. A sewerage facility, whether publicly or privately owned, which serves more than one parcel or lot.

(2) Sewerage Facility, Individual. A privately owner sewerage facility which serves a single parcel or lot for the purpose of disposal of domestic waste products.

(3) Sewerage Facility, Public. A sewerage facility, whether publicly or privately owned, which serves users for the purpose of disposal of sewage and which facility is provided, or is available, for public use.

Street. The term is synonymous with "road".

Subdivide Land. To divide an area or tract of land into four or more lots within a calendar year.

Subdivision. Either an act of subdividing land or an area or a tract of land subdivided as defined in this section.

Tract. A lot or parcel as defined in LC 13.010.

Width. The horizontal distance between the side boundary lines measured in the mean direction of the front and rear boundary lines.

13.050 General Requirements and Standards of Design and Development for Preliminary Plans. The following are the requirements to which the preliminary plan of a subdivision or partition must confirm:

(1) Conformity with the Comprehensive Plan. All divisions shall conform with the Comprehensive Plan for Lane County and the following city comprehensive plans:

(a) The comprehensive plan for a small city, if the division site is within an urban growth boundary but outside the city limits. Such small cities are:

(i) Cottage Grove
(ii) Creswell
(iii) Oakridge
(iv) Lowell
(v) Coburg
(vi) Junction City
(vii) Veneta
(viii) Florence
(ix) Dunes City

(b) The Eugene-Springfield Metropolitan Area Plan and any applicable Special Purpose/Functional Plan or Neighborhood Refinement/Community Plans, if the division site is within the plan boundaries but outside the limits of either city.

ORDINANCE NO. 10-86

EXHIBIT "A"

1. During the development of the Rural Comprehensive Plan in 1984, portions of Lane Code Chapters 13 and 16 dealing with land divisions were reviewed and revised to conform as much as possible to the then in existence ORS Chapters 92 and 215. The provisions were adopted by Lane County in Ordinance No. 1-84 on February 29, 1984. Included in the Lane Code Chapter 13.010 portion of Ord. No. 1-84 were the following land division related definitions:

"Divide. To separate a tract contiguous tracts of land under the same ownership into smaller tracts and different ownerships by deed, contract or lease; and when used herein refers collectively to partitions and subdivisions. To divide land shall not include the following:

(1) Leasing or financing of apartments, offices, stores, or similar spaces within an apartment building, industrial building or commercial building.

(2) Renting or leasing of spaces within a mobile home park, vacation (recreational) trailer park, motel, tourist court, campground or industrial development.

(3) Minerals, oil or gas leases.

(4) A lease for agricultural purposes.

(5) Foreclosures of liens.

(6) Foreclosures of recorded contracts for the sale of real property.

(7) The creation of cemetery lots.

(8) Any adjustment of a property boundary line where an additional parcel of land is not created and where the existing tract of land reduced in size by the adjustment is not reduced below the minimum area requirements of the applicable zoning.

(9) The transfer of ownership of a lot or parcel in an approved and recorded subdivision plat or partition map."

"Parcel. A unit of land that is created by a partitioning of land."

"Partition Land. Divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year."

"Subdivide Land. To divide an area or tract of land into four or more lots within a calendar year when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of such year."

"Tract. A lot, parcel or unsubdivided or unpartitioned land under the same ownership. Contiguous units of unsubdivided or partitioned land under the same ownership shall be considered a single tract."

Included in the Lane Code Chapter 16.090 portion of Ord. No. 1-84 were identical definitions to those quoted above and the following additional definition of a 'Legal Lot':

"Legal Lot. A tract of land which has been legally created in compliance with Lane County land division regulations and ORS Chapter 92:

(1) Any lot within a subdivision plat approved by the Board and recorded with the Lane County Clerk.

(2) Any lot within a minor subdivision plat endorsed and dated by the Secretary of the Lane County Planning Commission.

(3) Any parcel within a final partition map approved and recorded by Lane County.

(4) A tract of land created as a result of a deed or real property sales contract, which was not created as a result of (1) - (3) above, but which at the date the conveyance occurred, the creation of the tract was not subject to any Lane County land division regulations. However, contiguous units of unsubdivided or unpartitioned land under the same ownership shall constitute a single legal lot."

2. With the adoption of House Bill 2381 in 1985, ORS 92 and 215 were amended to include significant changes or additions in the land division definitions and related provisions. ORS 92.010 was amended to read, in part, as follows: **(BRACKETS [ ] indicate material added and UNDERLINES indicate material deleted):**

"(7) "Partition means either an act of partitioning land or an area or tract of land partitioned as defined in this section.

(8) "Partition land" means to divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year. "Partition land" does not include divisions of land resulting from lien foreclosures, divisions of land resulting from foreclosure of recorded contracts for the sale of real property and divisions of land resulting from the creation of cemetery lots; and "partition land" does not include adjustment of a lot line by the relocation of a common boundary where an additional parcel is not created and where the existing parcel reduced in size by the adjustment is not reduced below the minimum lot size established by any applicable zoning ordinance. "Partition land" does not include the sale of a lot in a recorded subdivision, even though the lot may have been acquired prior to the sale with other contiguous lots or property by a single owner.

[(8) "Partition land" means to divide land into two or three parcels of land within a calendar year, but does not include:

(a) A division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots; or

(b) An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land, reduced in size by the adjustment, complies with any applicable zoning ordinance.]

(12) "Subdivide land" means to divide an area or tract of land into four or more lots within a calendar year when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of such year.

[SECTION 2. Section 3 of this Act is added to and made a part of ORS 92.010 to 92.170.

SECTION 3. A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are changed or vacated or the lot or parcel is further divided, as provided by law.]"

ORS 215.010 was amended to read, in part, as follows (BRACKETS [ ] indicate material added and UNDERLINES indicate material deleted):

215.010. As used in ORS 215.020 to 215.190 and 215.402 to 215.438 [Chapter 215] the terms defined in ORS 92.010 shall have the meanings given therein, [except that "parcel":

(1) Includes a unit of land created:

(a) By partitioning land as defined in ORS 92.010;

(b) In compliance with all applicable planning, zoning and partitioning ordinances and regulations; or

(c) By deed or land sales contract, if there were no applicable planning, zoning or partitioning ordinances or regulations.

(2) Does not include a unit of land created solely to establish a separate tax account.]

3. By comparison of the Lane Code Chapter 13 and 16 provisions quoted in Finding #1 above and the revised statutory language quoted in Finding #2 above, the Lane Code provisions quoted in Finding #1 clearly do not comply with the revised and current statutory language of ORS 92 and 215.

4. The purpose and effects of ORD No.'s 10-86 and 11-86 are to strictly adopt the language that is now contained in ORS 92 and 215 as identified above in Finding #2 and to bring Lane Code Chapters 13 and 16 into compliance with these Chapters of State Law. The changes to Lane Code Chapter 13 are illustrated in legislative format in the attached Appendix to Exhibit "A"/ORD 10-86.

APPENDIX TO EXHIBIT "A"/ORD 10-86 (3 PAGES)

BRACKETS [ ] indicate material being added.
UNDERLINES _____ indicate material being deleted.

Divide. To separate a tract or contiguous tracts of land under the same ownership into smaller tracts and different ownerships by deed, contract or lease; and when used herein refers collectively to partitions and subdivisions. To divide land shall not include the following:

(1) Leasing or financing of apartments, offices, stores, or similar spaces within an apartment building, industrial building or commercial building.

(2) Renting or leasing of spaces within a mobile home park, vacation (recreational) trailer park, motel, tourist court, campground or industrial development.

(3) Minerals, oil or gas leases.

(4) A lease for agricultural purposes.

(5) Foreclosures of liens.

(6) Foreclosures of recorded contracts for the sale of real property.

(7) The creation of cemetery lots.

(8) Any adjustment of a property boundary line where an additional parcel of land is not created and where the existing tract of land reduced in size by the adjustment is not reduced below the minimum area requirements of the applicable zoning.

(9) The transfer of ownership of a lot or parcel in an approved and recorded subdivision plat or partition map.

BRACKETS [ ] indicate material being added.
UNDERLINES _____ indicate material being deleted.

Parcel. A unit of land that is created by a partitioning of land. [(1)] Includes a unit of land created:

(a) by partitioning land as defined in Lane Code 13.010,

(b) in compliance with all applicable planning, zoning and partitioning ordinances and regulations; or

(c) by deed or land sales contract if there are no applicable planning, zoning or partitioning ordinances or regulations.

(2) It does not include a unit of land created solely to establish a separate tax account.]

Partition Land. Divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit of land under single ownership at the beginning of such year. [To divide land into two or three parcels of land within a calendar year but does not include:

(a) a division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots; or

(b) an adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance"]

BRACKETS [ ] indicate material being added.
UNDERLINES _____ indicate material being deleted.

Subdivide Land. To divide an area or tract of land into four or more lots within a calendar year[.] when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of such year.

Tract. A lot, parcel or unsubdivided or unpartitioned land under the same ownership. Contiguous units of unsubdivided or partitioned land under the same ownership shall be considered a single tract. [or parcel as defined in Lane Code 13.010.]

FILE P. Ordinance PA 11-86: adopting definitions in Chapter 16 (Lane Code).
EXHIBIT # ZB 8-17-04 REF 129 PAGE 1185 E-19-04 LOPC

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. 11-86

SEP 12 1985

BY Stephanie Kaden

IN THE MATTER OF AMENDING CHAPTER 16 OF LANE CODE TO ADOPT DEFINITIONS WHICH ARE CONSISTENT WITH CHANGES TO ORS CHS. 92 AND 215 MADE BY THE 1985 OREGON LEGISLATURE, ADOPT A SEVERABILITY CLAUSE AND DECLARE AN EMERGENCY

WHEREAS, as a result of HB 2381, which was adopted during the 1985 Legislative Session, certain amendments were made to the definitions contained in ORS Chs. 92 and 215; and

WHEREAS, ORS 215.110 provides that the Board of Commissioners may, from time to time, amend its planning, zoning and subdivision ordinances; and

WHEREAS, the Lane County Planning Commission and West Lane Planning Commission have held a hearing on this matter on August 19, 1985; and

WHEREAS, the Board has held a hearing on this matter and desires to amend Lane Code Chapter 13 to comply with changes made by HB 2381 to ORS Chs. 92 and 215; now, therefore,

The Board of County Commissioners of Lane County ordains as follows:

Chapter 16 of Lane Code is hereby amended by removing and substituting the following pages:

REMOVE THESE PAGES	INSERT THESE PAGES
16.090 - 16.090, beginning with "children not of common parentage," to 16.090 - 16.090, beginning with "plant life." i.e. 16-14 to 16-27 (a total of 14 pages)	16.090 - 16.090, beginning with "children not of common parentage," to 16.090 - 16.090, beginning with "plant life." i.e. 16-14 to 16-27 (a total of 14 pages)

Said pages are attached hereto and incorporated herein by reference. The purpose of these substitutions is to adopt definitions which are consistent with changes to ORS Chs. 92 and 215 made in 1985 by the Oregon Legislature, adopt a severability clause and declare an emergency.

cnbj0637

The provisions repealed by this Ordinance remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

While not part of this Ordinance, we adopt the attached Exhibit "A" as Findings in support of this decision.

An emergency is hereby declared to exist and this Ordinance, being enacted by the Board in the exercise of its police power for the purpose of meeting such emergency and for the immediate preservation of the public peace, health and safety, shall take effect immediately.

Enacted this 10th day of September, 1986.

Chair, Lane County Board of Commissioners

Hannah Bradford

Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM
DATE 8-12-86 Lane County
OFFICE OF LEGAL COUNSEL

2 - IN THE MATTER OF AMENDING CHAPTER 16 OF LANE CODE TO ADOPT DEFINITIONS WHICH ARE CONSISTENT WITH CHANGES TO ORS CHS. 92 AND 215 MADE BY THE 1985 OREGON LEGISLATURE, ADOPT A SEVERABILITY CLAUSE AND DECLARE AN EMERGENCY

cnbj0637

defined, designated or otherwise identified for use by the tenants, employees or owners of the property for which the parking area is required by this Chapter and which is not open for use by the general public.

Parking Area, Public. Privately or publicly-owned property, other than streets or alleys, on which parking spaces are defined, designated or otherwise identified for use by the general public, either free or for remuneration. Public parking areas may include parking lots for retail customers, patrons and/or clients as required by this Chapter.

Parking Space. A permanently maintained space with proper access for one standard sized automobile.

Partition. Either an act of partitioning land or an area or tract of land partitioned. Partitions shall be divided into the following two types:

(1) Major Partition. A partition which includes the creation of a road.

(2) Minor Perition. A partition that does not include the creation of any road.

Partition Land. To divide land into two or three parcels of land within a calendar year, but does not include:

(a) a division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots; or

(b) an adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance.

Party. With respect to actions pursuant to LC 14.100 and LC 14.200, the following persons or entities are defined as parties:

(1) The applicant and all owners or contract purchasers of record, as shown in the files of the Lane County Department of Assessment and Taxation, of the property which is the subject of the application.

(2) Any County official.

(3) Any person, or his or her representative, and entity who is specially, personally or adversely affected by the subject matter, as determined by the Approval Authority.

Performance Agreement. A written agreement executed by a subdivider or partitioner in a form approved by the Board of Commissioners and accompanied by a security also approved by the Board. The security shall be of sufficient amount to ensure the faithful performance and completion of all required improvements in a specified period of time.

Person. A natural person, his heirs, executors, administrators or assigns, or a firm, partnership or corporation, its heirs or successors or assigns, or the agent of any of the aforesaid, or any political subdivision, agency, board or bureau of the State.

Personal Services. Laundering, dry cleaning and dyeing; rug cleaning and repair; photographic services; beauty and barber shops; apparel repair and alterations; shoe repair and maintenance; etc.

Planning Commission. The Planning Commission of Lane County, Oregon, which shall consist of two Planning Commissions referred to as the Lane County Planning Commission and the West Lane Planning Commission.

Plat. A final diagram and other documents relating to a subdivision.

Primary Processing Facility. A facility for the primary processing of forest products. The primary processing of a forest product means the use of a portable chipper, stud mill or other similar equipment for the initial treatment of a forest product, to facilitate its shipment for further processing. Forest products, as used in this definition, means timber and other resources grown upon the land or contiguous units of land where the primary processing facility is located.

Professional Services. Medical and health services, legal services and other professional services, including those related to: engineering, architecture, education, scientific research, accounting, planning, real estate, etc.

Received. Acquired by or taken into possession by the Director.

Recreational Vehicle. A vacation trailer or other unit, with or without motive power, which is designed for human occupancy and to be used temporarily for recreational or emergency purposes and has a floor space of less than 220 square feet, excluding built-in equipment, such as wardrobes, closets, cabinets, kitchen units or fixtures and bath or toilet rooms. The unit shall be identified as a recreational vehicle by the manufacturer.

Recreational Vehicle Park. A development designed primarily for transient service on which travel trailers, pickup campers, tent trailers and self-propelled motorized vehicles are parked and used for the purpose of supplying to the public a temporary location while traveling, vacationing or recreating.

Refinement Plan. Refinement plans are a detailed examination of the service needs and land use problems peculiar to a particular area. Refinements of the Comprehensive Plan can include specific neighborhood or community plans, or special purpose or functional plans (such as water, sewer or transportation plans). In addition, refinement plan can be in the form of major planned unit developments, annexation and zoning applications, or other special area studies.

Replacement in Kind. The replacement of a structure of the same size as the original and at the same location on the property as the original.

Residential Home. A residence for five or fewer unrelated physically or mentally handicapped persons and staff persons who need not be related to each other or to any other home

resident. A "handicapped person" means an individual who has a physical or mental impairment which for the individual constitutes or results in a functional limitation to one or more major life activities. "Major life activity" means self-care, ambulation, communication, transportation, education, socialization, employment and the ability to acquire and maintain adequate, safe and decent shelter.

Restoration. Revitalizing, returning or replacing original attributes and amenities such as natural biological productivity, aesthetic and cultural resources which have been diminished or lost by past alterations, activities or catastrophic events.

Restoration, Active. Use of specific positive remedial actions, such as removing fills, installing water treatment facilities or rebuilding deteriorated urban waterfront areas.

Restoration, Passive. The use of natural processes, sequences and timing which occurs after the removal or reduction of adverse stresses without other specific remedial action.

Roadside Stand. A use providing for the retail sale of any agricultural produce where more than one-half of the gross receipts result from the sale of produce grown on the unit of land where the roadside stand is located.

School. A place or institution for learning and teaching in which regularly scheduled and suitable instruction meeting the standards of the Oregon State Board of Education is provided.

Service Station. Any building, land area or other premises, or portion thereof, used or intended to be used for the retail dispensing or sales of vehicular fuels; and including as an accessory use the sale and installation of lubricants, tires, batteries and similar accessories.

Sewerage Facility or Sewage Facility. The sewers, drains, treatment and disposal works and other facilities useful or necessary in the collection, treatment or disposal of sewage, industrial wastes, garbage or other wastes.

(1) Sewerage Facility, Community. A sewerage facility, whether publicly or privately owned, which serves more than one parcel or lot.

(2) Sewerage Facility, Individual. A privately owned sewage facility which serves a single parcel or lot for the purpose of disposal of domestic waste products.

(3) Sewerage Facility, Public. A sewerage facility, whether publicly or privately owned, which serves users for the purpose of disposal of sewage and which facility is provided for or is available for public use.

Sign. Any fabricated sign for use outdoors, including its structure, consisting of any letter(s), figure, character, mark, point, plane, design, poster, picture, stroke, stripe, line, trademark, reading matter or illuminating device which is constructed, attached, erected, fastened or manufactured in any manner whatsoever to attract the public in any manner for recognized

purposes to any place, subject, person, firm, corporation, public performance, article, machine or merchandise display. However, the term "sign" shall not include any display of official, court or public notices, nor shall it include the flag, emblem or insignia of a nation, government unit, school or religious group, except such emblems shall conform to illumination standards set forth in this Chapter.

Site, Residential. An area of more or less intensive development, surrounding a dwelling, not less than 60 feet wide, nor less than 6,000 square feet in area and comparable to a normal city lot.

Solid Waste Management. A planned program providing for the collection, storage and disposal of solid waste including, where appropriate, recycling and recovery.

Start of Construction. The first placement of permanent construction of a structure (other than a mobile home) on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. For mobile homes not within mobile home parks, "start of construction" is the date on which the construction of facilities for servicing the site on which the mobile home is to be affixed (including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is complete.

State Plane Coordinate System. The system of plane coordinates which has been established by the U.S. Coast & Geodetic Survey for defining and stating the positions or locations of points on the surface of the earth within the State of Oregon.

Structure. Synonymous with the definition of building.

Structure in a Flood Hazard Area. A walled and roofed building, a mobile home or a tank used in the storage of gas or liquid which is principally above ground.

Subdivide Land. To divide an area or tract of land into four or more lots within a calendar year.

Subdivision. Either an act of subdividing land or an area or a tract of land subdivided as defined in this section.

Substantial Improvement. Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either, (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project or improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions, or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Tract. A lot or parcel as defined in LC 16.090.

Urban. Those places which must have an incorporated city. Such areas may include lands adjacent to and outside the incorporated city and may also: (a) have concentrations of persons who generally reside and work in the area, and (b) have supporting public facilities and services.

Urbanizable. Those lands within an urban growth boundary and which are identified and (a) determined to be necessary and suitable for future urban use areas, and (b) can be served by urban services and facilities, and (c) are needed for the expansion of an urban area.

Use. The purpose for which land, submerged or submersible lands, the water surface or a building is arranged, designed or intended, or for which either land or building is or may be occupied or maintained.

Veterinary Clinic. Synonymous with the definition of "animal hospital".

Water Dependent Use. A use or activity which can be carried out only on, in or adjacent to water areas because the use requires access to the water body for waterborne transportation, recreation, energy production or source of water.

Water Related Use. Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water dependent land or waterway use, and which, if not located adjacent to water, would result in public loss of quality in the goods or services offered. Except as necessary for water dependent or water related uses or facilities, residences, parking lots, spoil or dump sites, roads and highways, restaurants, businesses, factories and trailer parks are not generally considered dependent on or related to water location needs.

Wetlands. Land areas where excess water is the dominant factor determining the nature of soil development and the types of plant and animal communities living at the soil surface. Wetland soils retain sufficient moisture to support aquatic or semiaquatic plant life. In marine and estuarine areas, wetlands are bounded at the lower extreme by extreme low water; in freshwater areas, by a depth of six feet. The areas below wetlands are submerged lands.

Width. The horizontal distance between the side boundary lines measured in the mean direction of the front and rear boundary lines.

Yard. An open space on the same lot with a building unoccupied and obstructed from the ground upward, except as otherwise provided herein.

Yard, Front. A yard between the front line of the building (exclusive of steps) and the front property line.

Yard, Rear. An open, unoccupied space on the same lot with a building, between the rear line of the building (exclusive of steps, porches and accessory buildings) and the rear line of the lot.

Yard, Side. An open, unoccupied space on the same lot with a building, between the sidewall line of the building and the side line of the lot.

ORDINANCE NO. 11-86

EXHIBIT "A"

1. During the development of the Rural Comprehensive Plan in 1984, portions of Lane Code Chapters 13 and 16 dealing with land divisions were reviewed and revised to conform as much as possible to the then in existence ORS Chapters 92 and 215. The provisions were adopted by Lane County in Ordinance No. 1-84 on February 29, 1984. Included in the Lane Code Chapter 13.010 portion of Ord. No. 1-84 were the following land division related definitions:

"Divide. To separate a tract contiguous tracts of land under the same ownership into smaller tracts and different ownerships by deed, contract or lease; and when used herein refers collectively to partitions and subdivisions. To divide land shall not include the following:

(1) Leasing or financing of apartments, offices, stores, or similar spaces within an apartment building, industrial building or commercial building.

(2) Renting or leasing of spaces within a mobile home park, vacation (recreational) trailer park, motel, tourist court, campground or industrial development.

(3) Minerals, oil or gas leases.

(4) A lease for agricultural purposes.

(5) Foreclosures of liens.

(6) Foreclosures of recorded contracts for the sale of real property.

(7) The creation of cemetery lots.

(8) Any adjustment of a property boundary line where an additional parcel of land is not created and where the existing tract of land reduced in size by the adjustment is not reduced below the minimum area requirements of the applicable zoning.

(9) The transfer of ownership of a lot or parcel in an approved and recorded subdivision plat or partition map."

"Parcel. A unit of land that is created by a partitioning of land."

"Partition Land. Divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year."

"Subdivide Land. To divide an area or tract of land into four or more lots within a calendar year when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of such year."

"Tract. A lot, parcel or unsubdivided or unpartitioned land under the same ownership. Contiguous units of unsubdivided or partitioned land under the same ownership shall be considered a single tract."

Included in the Lane Code Chapter 16.090 portion of Ord. No. 1-84 were identical definitions to those quoted above and the following additional definition of a "Legal Lot":

"Legal Lot. A tract of land which has been legally created in compliance with Lane County land division regulations and ORS Chapter 92:

(1) Any lot within a subdivision plat approved by the Board and recorded with the Lane County Clerk.

(2) Any lot within a minor subdivision plat endorsed and dated by the Secretary of the Lane County Planning Commission.

(3) Any parcel within a final partition map approved and recorded by Lane County.

(4) A tract of land created as a result of a deed or real property sales contract, which was not created as a result of (1) - (3) above, but which at the date the conveyance occurred, the creation of the tract was not subject to any Lane County land division regulations. However, contiguous units of unsubdivided or unpartitioned land under the same ownership shall constitute a single legal lot."

2. With the adoption of House Bill 2381 in 1985, ORS 92 and 215 were amended to include significant changes or additions in the land division definitions and related provisions. ORS 92.010 was amended to read, in part, as follows: (BRACKETS [ ] indicate material added and UNDERLINES indicate material deleted):

"(7) "Partition means either an act of partitioning land or an area or tract of land partitioned as defined in this section.

(8) "Partition land" means to divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year. "Partition land" does not include divisions of land resulting from lien foreclosures, divisions of land resulting from foreclosure of recorded contracts for the sale of real property and divisions of land resulting from the creation of cemetery lots; and "partition land" does not include adjustment of a lot line by the relocation of a common boundary where an additional parcel is not created and where the existing parcel reduced in size by the adjustment is not reduced below the minimum lot size established by any applicable zoning ordinance. "Partition land" does not include the sale of a lot in a recorded subdivision, even though the lot may have been acquired prior to the sale with other contiguous lots or property by a single owner.

[(8) "Partition land" means to divide land into two or three parcels of land within a calendar year, but does not include:

(a) A division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots; or

(b) An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land, reduced in size by the adjustment, complies with any applicable zoning ordinance.]

(12) "Subdivide land" means to divide an area or tract of land into four or more lots within a calendar year when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of such year.

[SECTION 2. Section 3 of this Act is added to and made a part of ORS 92.010 to 92.170.

SECTION 3. A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are changed or vacated or the lot or parcel is further divided, as provided by law.]"

ORS 215.010 was amended to read, in part, as follows (BRACKETS [ ] indicate material added and UNDERLINES indicate material deleted):

215.010. As used in ORS 215.020 to 215.190 and 215.402 to 215.438 [Chapter 215] the terms defined in ORS 92.010 shall have the meanings given therein, [except that "parcel":

(1) Includes a unit of land created:

(a) By partitioning land as defined in ORS 92.010;

(b) In compliance with all applicable planning, zoning and partitioning ordinances and regulations; or

(c) By deed or land sales contract, if there were no applicable planning, zoning or partitioning ordinances or regulations.

(2) Does not include a unit of land created solely to establish a separate tax account.]

3. By comparison of the Lane Code Chapter 13 and 16 provisions quoted in Finding #1 above and the revised statutory language quoted in Finding #2 above, the Lane Code provisions quoted in Finding #1 clearly do not comply with the revised and current statutory language of ORS 92 and 215.

4. The purpose and effects of ORD No.'s 10-86 and 11-86 are to strictly adopt the language that is now contained in ORS 92 and 215 as identified above in Finding #2 and to bring Lane Code Chapters 13 and 16 into compliance with these Chapters of State Law. The changes to Lane Code Chapter 16 are illustrated in legislative format in the attached Appendix to Exhibit "A"/ORD 11-86.

APPENDIX TO EXHIBIT "A"/ORD 11-86 9 (5 PAGES)

BRACKETS [ ] indicate material being added.
UNDERLINES _____ indicate material being deleted.

Divide. To separate a tract or contiguous tracts of land under the same ownership into smaller tracts and different ownerships by deed, contract or lease; and when used herein refers collectively to partitions and subdivisions. To divide land shall not include the following:

(1) Leasing or financing of apartments, offices, stores or similar spaces within an apartment building, industrial building.

(2) Renting or leasing of spaces within a mobile home park, vacation (recreational) trailer park, motel, tourist court, campground or industrial development.

(3) Minerals, oil or gas leases.

(4) A lease for agricultural purposes.

(5) Foreclosures of liens.

(6) Foreclosures of recorded contracts for sale of real property.

(7) The creation of cemetery lots.

(8) Any adjustments of a property boundary line where an additional parcel of land is not created and where the existing tract of land reduced in size by the adjustment is not reduced below the minimum area requirements of the applicable zoning.

(9) The transfer of ownership of a lot or parcel in an approved and recorded subdivision plat or partition map.

BRACKETS [ ] indicate material being added.
UNDERLINES _____ indicate material being deleted.

Legal Lot. A tract of land which has been legally created in compliance with Lane County land division regulations and ORS Chapter 92:

(1) Any lot within a subdivision plat approved by the Board and recorded with the Lane County Clerk.

(2) Any lot within a minor subdivision plat endorsed and dated by the Secretary of the Lane County Planning Commission.

(3) Any parcel within a final partition map approved and recorded by Lane County.

(4) A tract of land created as a result of a deed or real property sales contract, which was not created as a result of (1) - (3) above, but which at the date the conveyance occurred, the creation of the tract was not subject to any Lane County land division regulations. However, contiguous units of unsubdivided or unpartitioned land under the same ownership shall constitute a single legal lot. [A lawfully created lot or parcel. A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are changed or vacated or the lot or parcel is further divided as provided by law.]

BRACKETS [ ] indicate material being added.
UNDERLINES _____ indicate material being deleted.

Parcel. A unit of land that is created by a partitioning of land.
[(1) Includes a unit of land created:
(a) by partitioning land as defined in Lane Code 16.090,
(b) In compliance with all applicable planning, zoning, and partitioning ordinances and regulations; or
(c) by deed or land sales contract if there are no applicable planning, zoning or partitioning ordinances or regulations.
(2) It does not include a unit of land created solely to establish a separate tax account.]

Partition Land. Divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year. [To divide land into two or three parcels of land within a calendar year but does not include:
(a) a division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots; or
(b) an adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance"]

BRACKETS [ ] indicate material being added.
UNDERLINES _____ indicate material being deleted.

Subdivide Land. To divide an area or tract of land into four or more lots within a calendar year[.] When such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of such year.

BRACKETS [ ] indicate material being added.
UNDERLINES _____ indicate material being deleted.

Tract. A lot, parcel or unsubdivided or unpartitioned land under the same ownership. Contiguous units of unsubdivided or partitioned land under the same ownership shall be considered a single tract. [or parcel as defined in Lane Code 16.090.]

LD

LAND DIVISIONS

Lane County Oregon Oct. 1978

(9) To ensure that the costs of providing rights-of-way and improvements for vehicular and pedestrian traffic, utilities and public areas serving new developments be substantially borne by the benefited persons rather than by the people of the County at large.

(10) To encourage new concepts and innovations in the arrangement of building sites, lots and parcels within divisions. Deviations from the traditional approaches of dividing lands may be considered for approval when such deviations will facilitate the ultimate development of the land in a unique manner that will be compatible with the purpose of this Chapter and which utilizes advances in living patterns and technology.

13.010 Definitions - Subdivision and Partition.

(1) Division. To divide or separate an area or tract of land by sale, lease, or separate building development and, when used herein, refers collectively to both partitions and subdivisions; provided that the following types of transactions shall not constitute division of land:

(a) Leasing or financing of apartments, offices, stores, or similar spaces within an apartment building, industrial building, or commercial building.

(b) Renting or leasing of spaces within a mobile home park, vacation (recreational) trailer park, motel, tourist court, or campground.

(c) Minerals, oil, or gas leases.

(d) Any adjustment of a lot or parcel property line by the relocation of a common boundary where an additional lot or parcel is not created, the existing lot or parcel reduced in size by the adjustment is not, after such reduction, smaller than the minimum lot or parcel size established under Chapter 10, "Zoning", the resulting lots or parcels are not otherwise in conflict with the Lane Code and no existing public utility easement is affected.

(e) Divisions of land resulting from the creation of cemetery lots.

(f) A lease for agricultural purposes.

(2) Lot. A unit of land that is created by a subdivision of land.

(3) Parcel. A unit of land that is created by a partitioning of land.

(4) Parcel Map. A final diagram and other documentation relating to a major or minor partition prepared pursuant to this Chapter.

(5) Partition. Either an act of partitioning land or an area or tract of land partitioned. Partitions shall be divided into the following two types:

(a) Major Partition. A partition which includes the creation of a road.

(b) Minor Partition. A partition that does not include the creation of any road.

(6) Partition Land. Divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year. Partition land does not include divisions of land resulting from the creation of cemetery lots; and partition land does not include any adjustment of a lot line by the relocation of a common boundary where an additional parcel is not created and where the existing parcel reduced in size by the adjustment is not reduced below the minimum lot size established by any applicable zoning ordinance. Partition land does not include the sale of a lot in a recorded subdivision, even though the lot may have been acquired prior to the sale with other contiguous lots or property by a single owner.

(7) Plat. A final map and other documents relating to a subdivision.

(8) Subdivide Land. To divide an area or tract of land into four or more lots within a calendar year when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of such year.

(9) Subdivision. Either an act of subdividing land or an area or a tract of land subdivided as defined in this section.

13.015 Classification of Divisions. Divisions shall be classified with respect to their location within the County and in addition, by the type of or intended use of the development in order to determine appropriate design and development standards. The classifications are as follows:

(1) Classification of Division by Location Within County.

(a) Major/Minor Development Center Divisions. A division located within the existing or potential service area of any major or minor development center as designated by the Comprehensive Plan.

(b) Rural Area. A division located within a rural area of the County as designated by the Comprehensive Plan and includes all areas not within the urban area and not within major/minor centers, and rural service centers.

(c) Rural Service Center Division. A division located within a rural service center of the County as designated by the Comprehensive Plan.

(d) Urban Area Division. A division located within the Eugene-Springfield Metropolitan Urban Area. Such area shall be defined in accordance with the boundaries and districts of the U. S. Bureau of Census, 1970 Census of Housing, Block Statistics Final Report H C (3) 194, Eugene, Oregon. Urbanized Area, and shall include the following census tracts: numbers 19 - 43 inclusive; numbers 45 - 54 inclusive; number 18, excluding enumeration districts 154 and 155; and number 44, excluding enumeration district number 145.

(2) Classification of Division by Type of Intended Use.

(a) Commercial Division. A division generally intended for commercial uses.

(b) Industrial Division. A division generally intended for industrial uses.

(c) Planned Unit Development. A division developed in connection with a Planned Unit Development application of Chapter 10, "Zoning".

(d) Residential Division. A division generally intended for residential uses.

13.020 Definitions - General. For the purposes of this Chapter, the following words and phrases shall mean:

Area, Lot or Parcel. The total horizontal net area within the property lines of a lot or parcel, but not including that area within a road right-of-way.

Building Site. That portion of the lot or parcel of land upon which the building and appurtenances are to be placed, or are already existing, including adequate areas for sewage disposal, light, air clearances, proper drainage, appropriate easements, and, if applicable, other items required by the Lane Code.

Control Strip. A strip of land contiguous to a road which land is deeded or dedicated to the County for the purposes of controlling access to or use of a lot or parcel.

Depth, Lot or Parcel. The distance between the midpoints of straight lines connecting the foremost points of the side lot lines in the rear, excluding any strip of land used primarily for access purposes.

Flood or Flooding. As designated by the National Flood Insurance Act of 1968, the general and temporary condition of partial or complete inundation of normally dry land areas (a) from the overflor of streams, rivers or other inland water, or (b) from tidal surges, abnormally

high tidal water, tidal waves, or rising coastal waters resulting from severe storms, or (c) from impounded water, or (d) from mudslides caused or precipitated by the accumulation of water on or under the ground.

Flood Plain. (Flood Prone Area) As designated by the National Flood Insurance Act of 1968, an area: (a) which has been in the past or can reasonably be expected in the future to be covered temporarily by flood, or (b) subject to unstable surface soil in which the history of instability, the nature of the geology, the structure of the soil, and the climate indicate a relatively high potential for mudslides (caused by the action of surplus water accumulated above or below the ground) to inundate normally dry land surfaces.

Floodway. As designated by the National Flood Insurance Act of 1968, the minimum areas of a riverine flood plain reasonably required for passage of flood water so the limits of the floodway vary according to conditions within the flood plain.

Improvement Agreement. An agreement that under prescribed circumstances may be used in lieu of required improvements or a performance agreement. It is a written agreement that is executed between the County and a developer, in a form approved by the Board of County Commissioners, in which the developer agrees to sign at a time any and all petitions, consents, etc., and all other documents necessary to improve an abutting road or other required improvements to County standards and to waive all rights or remonstrances against such improvements, in exchange for which the County agrees that the execution of the improvement agreement will be deemed to be compliance with the improvement requirements of the Code.

Lot/Parcel Width, Average. The average width of a lot or parcel determined by dividing the area of the lot or parcel by its depth.

Negotiate. Any activity preliminary to the execution of a binding agreement for the sale of land in a subdivision or partition, including but not limited to advertising, solicitation and promotion of the sale of such land.

Performance Agreement. A written agreement executed by a subdivider or partitioner in a form approved by the Board of Commissioners and accompanied by a security also approved by the Board. The security shall be of sufficient amount to ensure the faithful performance and completion of all required improvements in a specified period of time.

Roads. As defined in Lane Code, Chapter 15, "Roads".

Sale or Sell. Every disposition or transfer of land in a subdivision or partition or an interest or estate therein.

Sewerage Facility or Sewage Facility. The sewers, drains, treatment and disposal works and other facilities useful or necessary in the collection, treatment or disposal of sewage, industrial waste, garbage or other wastes.

Sewerage Facility, Community. A sewerage facility, whether publicly or privately owned, which serves more than one parcel or lot.

Sewerage Facility, Individual. A privately owned sewage facility which serves a single parcel or lot for the purpose of disposal of domestic waste products.

Sewerage Facility, Public. A sewerage facility, whether publicly or privately owned, which serves a sole user for the purpose of disposal of sewage and which facility is provided for or is available for public use.

Water Supply. As defined in Lane Code, Chapter 9, "Environment and Health".

13.025 Approval of partitions and Subdivisions Required. (1) No person shall divide land, except after approval of such division pursuant to this Chapter.

(Go To Next Page)

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

GREG WARF and SUNDARA WARF,
Petitioners,

vs.

COOS COUNTY,
Respondent,

and

BLUE RIDGE INVESTMENTS,
LLC and ROBERT SMEJKAL,
Intervenors-Respondent.

LUBA No. 2002-010

FINAL OPINION
AND ORDER

Appeal from Coos County.

C. Randall Tosh, Coos Bay, represented petitioners.

Steven R. Lounsbury, Coquille, represented respondent.

Bill Kloos and Dan Terrell, Eugene, represented intervenors-respondent.

HOLSTUN, Board Chair; BASSHAM, Board Member; BRIGGS, Board Member, participated in the decision.

DISMISSED 04/18/2002

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal a county decision that approves property line adjustments.

MOTION TO INTERVENE

Blue Ridge Investments, LLC and Robert Smejkal, the applicants below, move to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

RECORD OBJECTION

Petitioners object to the record filed by the county in this matter. In view of our disposition of the motion to dismiss, it is unnecessary to resolve petitioners' record objection.

FACTS

In a letter dated October 31, 2001, the county planning director approved the challenged property line adjustments. Petitioners first learned of the October 31, 2001 property line adjustment decision on December 13, 2001.[1[1]] On December 28, 2001, petitioners filed with the county a local appeal of the October 31, 2001 decision. Petitioners did not at that time file a separate appeal with LUBA. On January 4, 2002, the county's attorney advised petitioners that the planning department viewed property line adjustments as ministerial decisions and that the Coos County Zoning and Land Development Ordinance (CCZLDO) provided no right of local appeal to challenge ministerial decisions. On January 24, 2002, petitioners appealed the county's decision to LUBA.[2[2]]

[1[1]]Petitioners were not given written notice of the decision when it was rendered on October 31, 2001. The record includes no written notice of the October 31, 2001 decision to petitioners, and it is not clear to us how petitioners received notice of that decision. However, petitioners concede that they received actual notice of the October 31, 2001 decision on December 13, 2001. Response to Intervenors-Respondent's Motion to Dismiss 1. For purposes of this opinion, we assume that is the case.

[2[2]]Petitioners characterize the appealed decision as the county's October 31, 2001 property line adjustment decision, which only became final for purposes of appeal to LUBA when petitioners' attempted local appeal was denied on January 4, 2002. The January 4, 2002 letter is not included in the record, but a copy of that letter is attached to petitioners' January 24, 2002 notice of intent to appeal.

MOTION TO DISMISS

Intervenors contend that this appeal was not timely filed and for that reason must be dismissed. We summarize the parties' respective positions concerning the timeliness of this appeal before addressing the relevant CCZLDO and statutory provisions.

Intervenors contend that even if the challenged decision is correctly characterized as discretionary rather than ministerial, while petitioners were seeking a nonexistent local right of appeal, the deadline established under ORS 197.830(3) for petitioners to appeal the county's October 31, 2001 decision expired. *See Smith v. Douglas County*, 98 Or App 379, 780 P2d 232 (1989) (pursuit of nonexistent right of appeal does not suspend the statutory deadline for filing an appeal with LUBA); *Forest Park Neigh. Assoc. v. City of Portland*, 26 Or LUBA 636, 640 (1994) (same). Petitioners, on the other hand, argue that their effort to exhaust their local appeal rights was required and that this appeal is therefore timely filed.

The controlling question that is presented by the motion to dismiss is whether petitioners' right of appeal on the date they first learned of the county's October 31, 2001 decision was governed by the procedure the county *should have followed* in making its October 31, 2001 decision or by the procedure the county *actually followed*. Our express or implied answer to that question in various contexts has evolved over time as relevant statutes and related appellate court cases have evolved. *Neighbors for Sensible Dev. v. City of Sweet Home*, 39 Or LUBA 766, 775-76 (2001); *Tarjoto v. Lane County*, 29 Or LUBA 408, 410-14 (and cases cited therein), *aff'd* 137 Or App 305, 904 P2d 641 (1995). However, for the reasons explained below, we now believe that 1999 amendments to ORS 197.830 make the answer to that question much more straightforward than it was under prior statutes.

A. A. The October 31, 2001 Decision

CCZLDO 3.3.150 expressly authorizes the county planning department to approve property line adjustments.[3][3] However, with the exception of a recording requirement, CCZLDO 3.3.150 does not specify any particular procedure that the planning department must follow in approving a property line adjustment.[4][4] In this case the county did not follow the CCZLDO procedures for rendering administrative decisions that are described below. Instead, it viewed its decision as a ministerial decision. Based on that understanding, although there apparently are no express provisions for ministerial decision making in the CCZLDO, the county rendered its decision on October 31, 2001, without providing a written notice of administrative decision under CCZLDO 5.7.100(2).[5][5]

Petitioners dispute the county's characterization of the decision as "ministerial." Petitioners contend the county's decision involved the exercise of discretion and therefore should have been processed as an administrative decision.

Before turning to the parties' main argument, we agree with intervenors that if the challenged decision is a ministerial decision, in the sense that it does not involve the exercise of significant factual or legal discretion, LUBA would almost certainly lack jurisdiction, even if an

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[3][3]As defined by CCZLDO 3.3.150 and ORS 92.010(7)(b) and (11), a property line adjustment involves relocating a common property line between two properties without creating an additional unit of land and without reducing the size of either of the affected properties below any required minimum lot or parcel size.

[4][4]CCZLDO 3.3.150(6) provides:

> "The governing body, or [its] designee, may use procedures other than replatting procedures in ORS 92.180 and 92.185 to adjust property lines described in ORS 92.010(11), as long as those procedures include the recording, with the county clerk, of conveyances conforming to the approved property line adjustment as surveyed in accordance with ORS 92.060(7)."

[5][5]As relevant, CCZLDO 5.7.100(2) provides that "[n]otice of an administrative decision shall be mailed to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located [certain specified distances from the property that the subject of the administrative decision]." The challenged decision is a one-page letter that is addressed to intervenors' agent. Record 1. The letter includes no notice of any right of appeal and no separate notice of decision was given. Apparently no adjoining property owners were provided copies of the letter. *See* n 2.

appeal to LUBA were timely filed. ORS 197.015(10)(b)(A).[6][6] Accordingly, for purposes of this decision, we assume without deciding that petitioners are correct that the challenged decision required the exercise of discretion and for that reason is accurately viewed as a "permit" decision, as that term is defined by ORS 215.402(4).[7][7] *See Goddard v. Jackson County*, 34 Or LUBA 402, 411 (1998) (concluding that the property line adjustments in that case required the exercise of sufficient factual and legal judgment to make the ministerial exception at ORS 197.015(10)(b)(A) inapplicable); *Thompson v. City of St. Helens*, 30 Or LUBA 339, 343 (1996) (same).

B. B. Administrative Decisions Under the CCZLDO

CCZLDO Article 5.8 governs local appeals of "[d]iscretionary [d]ecisions." The county apparently interprets "administrative decisions" to include discretionary decisions that are rendered by planning staff without a prior public hearing.[8][8] Other discretionary decisions may be rendered initially by a hearings body and require a prior public hearing.[9][9] Under the county's view of CCZLDO Article 5.8, it applies only to *discretionary* decisions and therefore does not apply to *ministerial* decisions.

When the county renders administrative decisions, the CCZLDO requires that the county provide written notice of the administrative decision and provide an opportunity for a local appeal. CCZLDO 5.7.100(2) sets out detailed requirements for written notice of administrative decisions. Relevant provisions are set out below:

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[6][6]As relevant here, LUBA's jurisdiction is limited to land use decisions. ORS 197.825(1). Under ORS 197.015(10)(b)(A) decisions that are "made under land use standards which do not require interpretation or the exercise of policy or legal judgment," are not land use decisions.

[7][7]ORS 215.402(4) provides:

> "'Permit' means discretionary approval of a proposed development of land under ORS 215.010 to 215.311, 215.317, 215.327 and 215.402 to 215.438 and 215.700 to 215.780 or county legislation or regulation adopted pursuant thereto. * * *"

[8][8]The CCZLDO does not include a definition of "administrative decision."

[9][9]No party contends that a prior public hearing was required in this matter or that a decision by a hearings body was required under the CCZLDO.

"(e) Content of a mailed notice of [administrative] decision shall include the following:

"(i) Explain the nature of the application and the proposed use or uses which could be authorized;

"* * * * *

"(iii) State any person who is adversely affected or aggrieved or who is entitled to written notice of this [administrative] decision may appeal the decision to the Planning Commission by filing a written appeal pursuant to Article 5.8 of the Ordinance.

"(iv) Describe the nature of the [administrative] decision.

"* * * * *

"(vii) State the [administrative] decision *will not become final until the period for filing an appeal has expired.*

"(viii) State that appeals of the [administrative] decision *cannot be appealed directly to the Land Use Board of Appeals under ORS 197.830.*

"* * * * *

"(g) State the [administrative] decision *will not become final until the period for filing an appeal has expired.*

"(h) State that appeals of the [administrative] decision *cannot be appealed directly to the Land Use Board of Appeals under ORS 197.830.*" (Emphases added.)

CCZLDO 5.7.100(2) makes it clear that there is a right to a local appeal to challenge administrative decisions. It twice states that there is *no right to a direct appeal to LUBA* to challenge such decisions and that such decisions do not become final until the time for filing that local appeal has run.

The notice and opportunity for local appeal process that is described above generally parallels statutory requirements for rendering permit decisions without first providing a public

hearing. ORS 215.416(11) (counties); ORS 227.175(10) (cities). *See Wilbur Residents v. Douglas County*, 151 Or App 523, 528, 950 P2d 368 (1997) (describing the statutory procedure).[10[10]]

C. Finality

As relevant here, LUBA's jurisdiction is limited to land use decisions. As defined by ORS 197.015(10)(a) a land use decision must be a final decision. Under OAR 661-010-0010(3):

> "A decision becomes final when it is reduced to writing and bears the necessary signatures of the decision maker(s), unless a local rule or ordinance specifies that the decision becomes final at a later date, in which case the decision is considered final as provided in the local rule or ordinance."

From its appearance, the October 31, 2001 decision is final. It is in writing and is signed. The letter does not indicate that there is any right of local appeal. While it is clear that petitioners believe the county should have utilized administrative decision making procedures to rule on the requested property line adjustments, it is equally clear that the county did not do so. No party argues that there is a local right of appeal to challenge county ministerial decisions. Putting aside the merits of the county's decision to approve the disputed property line adjustments ministerially, rather than through its administrative decision making procedure, it is clear that the October 31, 2001 decision was final when it was rendered, in the sense it was reduced to writing, signed by the local decision maker and no local law delayed finality.

We address the closely related requirement of exhaustion of administrative remedies next.

[10[10]]The critical feature of the statutorily required procedure is that the permit decision may be rendered without the necessity of a prior public hearing provided: (1) written notice is given to the same persons who would have been entitled to notice of a public hearing, if a prior public hearing had been held, and (2) such persons who are entitled to notice, and any persons who are not entitled to written notice, but are adversely affected or aggrieved by the decision, are provided an opportunity for a local *de novo* appeal.

D. D. Exhaustion of Local Appeals in Cases Where a Land Use Decision is Rendered Without Providing a Hearing

1. The Requirement to Exhaust Local Remedies that are Available by Right

Under ORS 197.825(2), our jurisdiction to review land use decisions is conditioned on a petitioner first exhausting any local right of appeal that is "available by right."[11[11]] Because ORS 197.825(2)(a) requires that petitioners first exhaust any available local appeal, petitioners in this appeal correctly considered whether any such local appeal was "available by right." Had the county approved the requested property line adjustments pursuant to its administrative decision making procedures, as petitioners contend it should have done, and contemporaneously provided petitioners written notice of its October 31, 2001 decision, it is clear that petitioners would have had a right of local appeal.

Even though the county did not render its October 31, 2001 decision pursuant to its administrative decision making procedure, and did not provide written notice of its October 31, 2001 decision to petitioners, petitioners somehow received actual notice of the decision 43 days later, on December 13, 2001. CCZLDO 5.8.200 requires that an appeal of an administrative decision must "be filed within fifteen (15) days of the date notice of decision was mailed." We understand petitioners to contend that because the county did not contemporaneously mail written notice of the October 31, 2001 decision to petitioners and petitioners filed their local appeal within 15 days of the date they first learned of the decision, their local appeal was timely filed under CCLDO 5.8.200. We also understand petitioners to argue that that local appeal was not exhausted until the county attorney sent the January 4, 2002 letter denying that appeal to petitioners.

In arguing that this appeal is timely filed, petitioners rely on two critical contentions. First, that the challenged decision is discretionary and therefore should have been rendered as an administrative decision (as that term is used in the CCZLDO) and a permit (as that term is

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[11[11]] ORS 197.825(2)(a) provides that LUBA's jurisdiction "[i]s limited to those cases in which the petitioner has exhausted all remedies available by right before petitioning [LUBA] for review[.]"

defined at ORS 215.402(4)). *See* n 7. Second, petitioners contend that the county was required in this case to provide the local appeal that is required by CCZLDO 5.7.100(2)(e)(iii) and Article 5.8 and ORS 215.416(11), even though the county did not purport to make its decision as an administrative decision under the CCZLDO or a permit decision under ORS 215.416(11).

Assuming petitioners' two critical contentions are correct, and reading CCZLDO 5.7.100(2)(e)(iii) and (viii) and 5.7.100(2)(g) and (h) in isolation, it is understandable that petitioners would heed the twice stated advice that (1) their right of local appeal must first be exhausted and (2) there is no direct route of appeal to LUBA to challenge a planning department administrative decision. However, although we assume without deciding that petitioners' first contention is correct, we do not agree with their second contention.

As we explain below, ORS 197.830(3) and (4) now comprehensively govern the timing and deadlines for appeal of land use decisions that are rendered without a prior local hearing. For purposes of resolving the motion to dismiss, we assume the county is wrong about the ministerial nature of the challenged decision and that it should have been adopted pursuant to the county's administrative decision making procedures, which call for notice and an opportunity for local appeal. Under ORS 197.830(3), when petitioners discovered the county's error, their only remaining right of appeal was to LUBA under ORS 197.830(3)(a).

2. The ORS 197.830(3) Right to Directly Appeal to LUBA Where Land Use Decisions are Rendered Without a Prior Hearing

In 1989, the legislature first amended ORS 197.830 expressly to provide a right to appeal land use decisions directly to LUBA where those decisions are rendered without a prior local hearing.[12[12]] In a case decided by LUBA in 1995, we explained that before this 1989 legislation

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[12[12]]As adopted in 1989, ORS 197.830(3) provided as follows:

> "If a local government makes a land use decision without providing a hearing * * * a person adversely affected by the decision may appeal the decision to [LUBA] under this section:
>
> "(a) Within 21 days of actual notice where notice is required; or

took effect, LUBA had determined under prior statutes and appellate court decisions that interpreted and applied those statutes, that "any time period set by the local code for filing a local appeal does not begin to run until the required notice of the decision is provided" under ORS 215.416(11) and 227.175(10). *Tarjoto*, 29 Or LUBA at 412 n 4. In other words, under the pre-1989 statutes, where petitioners learned, after the fact, that a land use decision had been rendered without first providing a hearing, such petitioners were first required to exhaust any available local remedies before appealing to LUBA, and the local deadlines for seeking those remedies did not begin to run until such petitioners received actual notice of the decision. Under that tolling doctrine, petitioners' decision to pursue a local appeal rather than pursue an appeal directly to LUBA would almost certainly have been the correct choice.

In *Tarjoto*, we read ORS 197.830(3), the ORS 215.416(11) provisions specifically authorizing permit decisions without a hearing and the ORS 197.825(2)(a) exhaustion of local remedies requirement together and concluded that ORS 197.830(3) did not authorize a direct appeal to LUBA in the circumstances presented in that case. We reached that conclusion in *Tarjoto* because the county failed to provide the petitioner notice of its permit decision, as required by ORS 215.416(11). We concluded that that failure tolled the time for the petitioner to file a local appeal until the county provided the petitioner the notice of decision to which he was entitled. Finally, we concluded that that local appeal must be exhausted before an appeal at LUBA was available. 24 Or LUBA at 414. Because the petitioner in *Tarjoto* had not exhausted his local appeal before appealing directly to LUBA, we dismissed the appeal.

LUBA's opinion in *Tarjoto*, and the Court of Appeals' decision that affirmed that decision, both have some bearing on the ultimate issue that is presented here. We therefore discuss those opinions below before turning to the current language of ORS 197.830, which controls here.

"(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required."

In *Tarjoto*, as in the present case, the county's land use decision was rendered without providing a hearing. However, the facts in *Tarjoto* differ from the relevant facts in this case in at least two important respects. First, in *Tarjoto*, the county was attempting to adopt a decision pursuant to ORS 215.416(11) and its local code equivalent. The county's failure to provide the required notice of decision to the petitioner was due to an oversight. Here the county was proceeding under its arguably incorrect assumption that its decision was nondiscretionary and therefore required neither a hearing nor the notice of administrative decision and opportunity for local appeal that are required by the CCZLDO and ORS 215.416(11). A second important difference in *Tarjoto* is that the petitioner filed both a local appeal and a direct appeal to LUBA under ORS 197.830(3), and the county agreed to grant the petitioner's request for a local appeal. Here petitioners did not file a direct appeal to LUBA at the same time they filed their local appeal on December 28, 2001, and the county refused petitioners' attempted local appeal of the October 31, 2001 property line adjustment decision.

As noted earlier, LUBA held in *Tarjoto* that because ORS 215.416(11) specifically authorizes permit decisions without a prior hearing, ORS 197.830(3) did not apply, and ORS 197.825(2) required that the petitioner seek and exhaust his local remedy before appealing to LUBA. It is reasonably clear that the Court of Appeals did not agree with our holding. The court limited its decision to affirm LUBA to the undisputed fact in that case that the county was willing to and in fact did provide the petitioner a local appeal. The Court of Appeals expressly left open the possibility that ORS 197.830(3) would provide the petitioner a direct right of appeal to LUBA if the circumstances were otherwise:

> "We need not decide and we reserve judgment about the relative effects and applicability of ORS 197.830(3) and ORS 215.416(11)(a) to facts that differ from those here. For example, we do not reach the question of whether petitioner could have appealed directly to LUBA under ORS 197.830(3) after learning of the planning director's decisions, had he not also appealed to the hearings officer and thereby obtained rulings from the county, LUBA and us that the local remedy is 'available' within the meaning of ORS 197.825(2)(a).

"Whatever their precise relationship may be, ORS 197.830(3) and ORS 215.416(11) are not designed to foster gamesmanship on the part of parties or decision makers, of the kind that petitioner hypothesizes, *e.g.*, in which 'local remedies' are artificially fabricated or interpreted as being 'unavailable' in an effort to defeat the possibility of timely LUBA appeals. Petitioner describes LUBA's interpretation of the relationship of the two statutes as creating a 'jurisdictional hall of mirrors.' If that description is meant to imply that either the statutes or the way that LUBA applied them create the risk of a jurisdictional void, we disagree. We think the intended effect of the statutes is the opposite, *i.e.*, to provide adequate procedures to prevent cases from slipping through jurisdictional cracks. LUBA's decision gives effect to that intent, and we hold that it did not err." 137 Or App at 310-11 (footnote omitted).

We believe the clearest inference from the above-quoted language is that the Court of Appeals viewed ORS 197.830(3) as a legislative attempt to eliminate the jurisdictional confusion that is created where a land use decision is rendered without a hearing and parties belatedly learn of the decision. In short, the legislature adopted ORS 197.830(3) to provide a right of direct appeal to LUBA in such cases, except in cases where the petitioners also seek a local appeal and, for whatever reason, the local government grants a local appeal.

3. 1999 Amendments to ORS 197.830

Without regard to whether we correctly understand the import of the above-quoted language from the Court of Appeals' decision in *Tarjoto*, the legislature further amended ORS 197.830 in 1999 to modify ORS 197.830(3) to specifically exclude application of that subsection of the statute in situations where a decision is rendered pursuant to ORS 215.416(11) or 227.175(10). The legislature also added a new section, which is now codified at ORS 197.830(4), that specifically addresses such permit decisions rendered pursuant to ORS 215.416(11) or 227.175(10). Relevant provisions of the current version of ORS 197.830 are set out below:

"(1) Review of land use decisions or limited land use decisions under ORS 197.830 to 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals.

"* * * * *

"(3) If a local government makes a land use decision without providing a hearing, *except as provided under ORS 215.416 (11) or 227.175 (10)*, or the local government makes a land use decision that is different from the

proposal described in the notice of hearing to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

"(a) Within 21 days of actual notice where notice is required; or

"(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

"(4) If a local government makes a land use decision without a hearing *pursuant to ORS 215.416 (11) or 227.175 (10)*:

"(a) A person who was not provided mailed notice of the decision as required under ORS 215.416 (11)(c) or 227.175 (10)(c) may appeal the decision to the board under this section within 21 days of receiving actual notice of the decision.

"(b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who is adversely affected or aggrieved by the decision may appeal the decision to the board under this section within 21 days after the expiration of the period for filing a local appeal of the decision established by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

"(c) A person who receives mailed notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may appeal the decision to the board under this section within 21 days of receiving actual notice of the nature of the decision, if the mailed notice of the decision did not reasonably describe the nature of the decision.

"(d) Except as provided in paragraph (c) of this subsection, a person who receives mailed notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the decision to the board under this section.

"* * * * *

"(9) A notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is mailed or otherwise submitted to parties entitled to notice under ORS 197.615. * * *"

Although it has been amended over the years, the generally applicable statutory deadline for filing an appeal with LUBA appears at ORS 197.830(9), set out above. Read in context with ORS 197.830(3) and (4), ORS 197.830(9) applies in cases where at least one local hearing is provided and it establishes a deadline of 21 days after the decision becomes final or 21 days after notice is mailed, depending on the type of decision. ORS 197.830(3) and (4) now address the deadlines for appealing land use decisions to LUBA in all cases where a local hearing is not provided in advance of the decision. As explained below, ORS 197.830(4) governs permit decisions that are rendered "without a hearing pursuant to ORS 215.416 (11) or 227.175 (10)." ORS 197.830(3) governs all other cases where a land use decision is rendered without providing a hearing, including any case where the decision arguably should have been rendered pursuant to ORS 215.416(11) or 227.175(10), but was not rendered pursuant to those statutes.

ORS 197.830(4) now comprehensively addresses the situation where a "local government makes a land use decision without a hearing pursuant to ORS 215.416 (11) or 227.175 (10)." Where the local government attempts to render a permit decision pursuant to ORS 215.416 (11) or 227.175 (10), but fails to provide notice of the decision to a person who is entitled to such written notice of the decision, that person may appeal to LUBA "within 21 days of receiving actual notice of the decision." ORS 197.830(4)(a). If the city or county gives the required notice of a permit decision under ORS 215.416 (11) or 227.175 (10) to a person, but the notice does "not reasonably describe the nature of the decision," the 21-day deadline for that person to appeal to LUBA begins on the date the person receives actual notice of the nature of the decision. ORS 197.830(4)(c). Those persons who were not entitled to written notice of a permit decision that is rendered pursuant to ORS 215.416 (11) or 227.175 (10), but are adversely affected or aggrieved by the permit decision, may appeal directly to LUBA, but must do so "within 21 days after the expiration of the period for filing a local appeal of the decision[.]" ORS 197.830(4)(b). Finally, the statute makes it clear that persons who are given written notice of a permit decision that is rendered pursuant to ORS 215.416 (11) or 227.175 (10) and provided

the opportunity for a local appeal must first exhaust that local appeal before they may appeal to LUBA. ORS 197.830(4)(d).

However, it is clear from the text and context of ORS 197.830(4) that this subsection of ORS 197.830 *only* applies where the local government is making "a land use decision without a hearing *pursuant to ORS 215.416(11) or 227.175(10)*[.]" (Emphasis added.) The county decision that is challenged in this appeal was not rendered pursuant to ORS 215.416(11) or the CCZLDO provisions that implement that statute. Rather, the county's decision was rendered pursuant to the county's arguably erroneous belief that its decision was ministerial and therefore could be rendered without a hearing and without following the county's administrative decision making procedures. The county may well have been incorrect in that belief, but it is clear from the record that it was not *proceeding pursuant to ORS 215.415(11)* or the above-quoted county administrative decision procedures that implement that statute.

We conclude that ORS 197.830(4) only applies where a local government is attempting to render a permit decision without a prior hearing "pursuant to ORS 215.416(11) or 227.175(10)."[13[13]] We also conclude that ORS 197.830(3) applies in all other cases where a local government adopts a land use decision without providing a hearing, including cases where the local government mistakenly believes its decision is not a discretionary "permit" decision, as that term is defined by ORS 215.402 and 227.160(2), and for that reason does not provide the required notice of decision and opportunity for a local appeal.

The conclusion we have just reached in not consistent with our recent decision in *Neighbors for Sensible Dev.*, 39 Or LUBA at 775-76, in which we concluded the choice between ORS 197.830(3) and (4), in cases where a local government is arguably mistaken about whether

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[13[13]] In most if not all cases, the question of whether the local government is attempting to adopt a permit decision "pursuant to ORS 215.416(11) or 227.175(10)" will be answered by determining whether the local procedures that the local government followed or attempted to follow are the local procedures that implement ORS 215.416(11) or 227.175(10). It is clear in the present appeal that the county did not follow and was not attempting to follow the county's administrative decision making procedures that implement ORS 215.416(11). CCZLDO 5.7.100(2), which was set out in part earlier in the text, imposes a number of detailed requirements for notice of an administrative decision rendered without a prior hearing. The October 31, 2001 decision makes no attempt to comply with those requirements.

ORS 215.416(11) or 227.175(10) applies, is governed by the procedure that the local government *should have followed* rather than the procedure it *actually followed*. We now believe that the choice between ORS 197.830(3) and (4) is governed by the procedure the local government actually followed, and our contrary conclusion in *Neighbors for Sensible Dev.* is overruled.

Returning to the present case, there is no dispute that the county rendered its decision without a hearing. There is also no dispute that the county did not render its decision pursuant to ORS 215.416(11) or the CCZLDO provisions that implement that statute. Therefore, ORS 197.830(3) applies. Under ORS 197.830(3)(a), such decisions may be appealed to LUBA "[w]ithin 21 days of actual notice where notice is required." Under ORS 197.830(3)(b), such decisions may be appealed to LUBA "[w]ithin 21 days of the date a person knew or should have known of the decision where no notice is required."

If, as petitioners allege, the county erroneously adopted its decision without observing the procedural requirements of ORS 215.416(11) or the CCZLDO provisions that implement that statute, petitioners were entitled to written notice of that decision, and ORS 197.830(3)(a) applies.[14[14]] Therefore, petitioners were entitled to appeal the October 31, 2001 decision directly to LUBA within 21 days after they received actual notice of that decision on December 13, 2001. Instead petitioners attempted to file a local appeal. As previously noted, the county advised petitioners on January 4, 2002, that there was no right to a local appeal to challenge its October 31, 2001 decision. By the time petitioners filed their appeal at LUBA on January 24, 2002, the deadline for filing their appeal to LUBA under ORS 197.830(3)(a) had expired. Because petitioners' January 24, 2002 appeal was not timely filed, this appeal must be dismissed. *Smith*, 98 Or App at 382-83.

The variety of notice and other local procedural errors that are possible in rendering land use decisions, along with the often complicated interrelationship between ORS 197.830(3),

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[14[14]]Petitioners assert, and intervenors do not dispute, that as adjacent property owners they would have been entitled to written notice of the decision if administrative decision making procedures had been followed.

(4) and (9) and the statutory exhaustion requirement of ORS 197.825(2), invite confusion about whether a right of local appeal exists to challenge a local government decision or whether the only right of appeal to challenge that decision lies at LUBA. Overlapping and duplicative local land use procedural provisions, which in some cases are inconsistent with statutory requirements, often add to the possible confusion. This potential for confusion makes caution consistently appropriate. When confronting uncertainty among relevant statutes and local procedural provisions, if there is any doubt about the proper venue for appeal and the deadline for such an appeal, the filing of timely precautionary appeals with all possible review bodies is the only safe course of action. Had petitioners filed a precautionary appeal with LUBA at the same time they filed their attempted local appeal of the October 31, 2001 decision on December 28, 2001, the county might have elected to allow the local appeal even if one were not required under the CCZLDO. If the county had done so, even under the current version of ORS 197.830(3) and (4), that local appeal would likely have had to be exhausted under the Court of Appeals' reasoning in *Tarjoto* before an appeal would be available at LUBA. On the other hand, if the county determined that the local appeal was not available, as it did here, then the precautionary LUBA appeal would be available to allow review of the decision on the merits.

Because petitioners' January 24, 2002 LUBA appeal of the county's October 31, 2001 decision was filed more than 21 days after petitioners received actual notice of the decision on December 13, 2001, the appeal was not timely filed. This appeal is therefore dismissed.

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

GREG WARF and SUNDARA WARF,
Petitioners,

vs.

COOS COUNTY,
Respondent,

and

BLUE RIDGE INVESTMENTS, LLC
and ROBERT SMEJKAL,
Intervenors-Respondent.

LUBA No. 2002-087

FINAL OPINION
AND ORDER

Appeal from Coos County.

Malcolm J. Corrigall, Coos Bay, filed the petition for review and argued on behalf of petitioners. With him on the brief was Corrigall and McClintock, LLP.

No appearance by Coos County.

Daniel A. Terrell, Eugene, filed the response brief and argued on behalf of intervenors-respondent. With him on the brief was the Law Office of Bill Kloos, PC.

HOLSTUN, Board Chair; BASSHAM, Board Member; BRIGGS, Board Member, participated in the decision.

REVERSED 01/07/2003

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal a county decision that grants approval for two property line adjustments.

FACTS

Intervenors own three contiguous parcels, which we refer to collectively as a tract. Petitioners appealed an October 31, 2001 planning department decision that approved prior property line adjustments among the parcels within the tract. That appeal was dismissed as untimely filed. Warf v. Coos County, 42 Or LUBA 84 (2002). The property line adjustments that are the subject of this appeal further adjust the property lines that were established by that October 31, 2001 decision.

The following page shows the configuration of intervenors' three-parcel tract after the October 31, 2001 decision (Figure 1). The first property line adjustment drops a common vertical (north-south) boundary between the two largest parcels to a horizontal (east-west) position, forming a large parcel to the north and east, a small parcel to the southwest and a smaller parcel in the middle of the tract (Figure 2). The second property line adjustment swings the westernmost common vertical boundary between the two smaller parcels downward more than 180 degrees, making the small middle parcel larger and leaving a small parcel at the southern boundary of the tract (Figure 3).

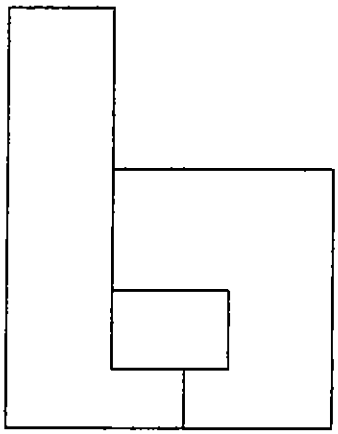

Fig 1: Starting

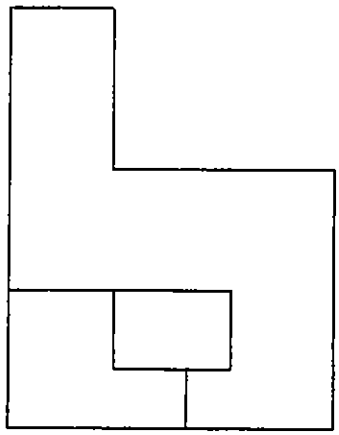

Fig. 2: Configuration after First Adjustment

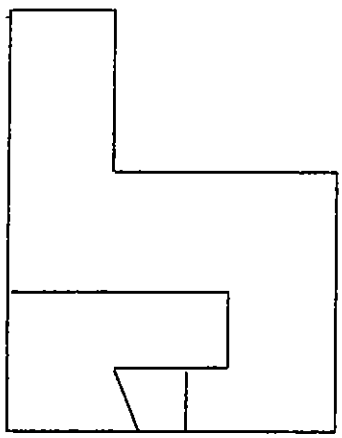

Fig. 3: Configuration after Second Adjustment

The county planning department processed intervenors' application ministerially. By that we mean the planning department did not provide a public hearing before making its decision and did not provide notice to persons other than the applicants or an opportunity for a local appeal of its decision. The planning department made its decision on June 17, 2002.[1[1]] Petitioners learned of the June 17, 2002 decision and filed this appeal with LUBA 16 days later, on July 3, 2002.

JURISDICTION

As relevant, our jurisdiction is limited to land use decisions. ORS 197.825(1). As defined by ORS 197.015(10)(a), a decision that applies a land use regulation is a land use decision unless

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[1[1]] That June 17, 2002 decision is a one-page letter addressed to intervenors' representative.

one of the statutory exceptions at ORS 197.015(10)(b) applies. There is no dispute that the county applied the Coos County Zoning and Land Development Ordinance (CCZLDO). The CCZLDO is a land use regulation. Therefore the disputed property line adjustment is a land use decision, unless one of the exceptions at ORS 197.015(10)(b) applies. Intervenors move to dismiss, arguing that the challenged property line adjustment is excluded from the ORS 197.015(10)(a) statutory definition of land use decision by ORS 197.015(10)(b)(A), which provides that land use decisions do not include a decision "[w]hich is made under land use standards which do not require interpretation or the exercise of policy or legal judgment."

We tend to agree with much of intervenors' argument that most of the inquiries the county must make in approving a property line adjustment under CCZLDO 3.3.150 might not require the exercise of much, if any, "policy or legal judgment." However, if our discussion later in this opinion of the relevant statutory and CCZLDO provisions that define and limit property line adjustments makes anything clear, it demonstrates that the county's decision that intervenors' application could be accepted, reviewed and approved as a property line adjustment required interpretation and the exercise of significant legal judgment. Therefore, the county's decision is not one that qualifies for the ORS 197.015(10)(b)(A) exception for decisions "made under land use standards which do not require interpretation or the exercise of policy or legal judgment." *See Tirumali v. City of Portland*, 169 Or App 241, 245-47, 7 P3d 761 (2000) (finding the term "finished surface" from which building height was measured under the city's code to be "ambiguous" and in need of interpretation).

Intervenors' motion to dismiss is denied.

INTRODUCTION

An understanding of the relationship between subdivisions, partitions and property line adjustments is helpful in resolving the central question that is presented in this appeal.

A person who wishes to divide an existing parcel into four or more lots may seek approval of a subdivision. ORS 92.010(15) provides the following definition:

"'Subdivide land' means to divide land into four or more lots within a calendar year."

A person who wishes to divide an existing parcel into two or three parcels may do so by seeking approval of a partition. ORS 92.010(7) provides the following relevant definition:

"'Partition land' means to divide land into two or three parcels of land within a calendar year, but does not include:

"* * * * *

"(b) An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the *existing* unit of land reduced in size by the adjustment complies with any applicable zoning ordinances[.]" (Emphasis added.)

As defined by ORS 92.010(11), "'[p]roperty line adjustment' means the relocation of a common property line between two abutting properties."[2[2]]

The above definitions permit some choice on the part of a landowner in dividing property and reconfiguring existing property lines. For example, a person who wishes to divide a single existing parcel into five lots can do so in a single year by seeking approval of a five-lot subdivision. Alternatively, the existing parcel could be divided into five parcels by submitting a request for a three-parcel partition one year and a two-parcel partition in the next year.

Similarly, a person who wishes to reconfigure existing, adjoining parcels might be able to accomplish that reconfiguration by partitioning one of those parcels and then combining the resulting parcels so as to achieve the desired configuration. Alternatively, ORS 92.010(7)(b) and 92.010(11) might permit the property owner to accomplish the same objective though a property line adjustment, and thereby avoid the need to seek approval of a partition. The possibilities for

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[2[2]] CCZLDO 3.3.150 essentially repeats the ORS 92.010(7)(b) and 92.010(11) provisions governing property line adjustments:

"Property Line Adjustments. Property line adjustments shall satisfy the requirements of Chapter 92 of the Oregon Revised Statutes. A property line adjustment is the relocation of a common boundary between two *or more* abutting properties where an additional unit of land is not created and where the *existing* unit of land reduced in size by the adjustment complies with any applicable zoning ordinance." (Emphasis added.)

realigning existing parcels with a single property line adjustment, *i.e.*, by relocating a common boundary between the two parcels, are somewhat limited. However, the possible realignments of existing parcels that could be achieved through serial property line adjustments appear to be almost unlimited. Moreover, unlike the yearly three-parcel limitation on partitions, there does not appear to be any statutory limitation on the number of property line adjustments that may be approved in any single year. The central question presented in this appeal is whether the county approved a property line adjustment, or whether the county approved something else.

FIRST ASSIGNMENT OF ERROR

A. Partition or Property Line Adjustment

Under their first assignment of error, petitioners allege the county erred by allowing "[i]ntervenors to reconfigure the shape of their parcels in such a manner that violates the definition of property line adjustment provided in ORS 92.010(11)." Petition for Review 5. With the added observation that the approved reconfiguration does not qualify as a property line adjustment under CCZLDO 3.3.150, we agree with petitioners.

As the concept is used in ORS 92.010(7) and 92.010(11), a property line adjustment is a rather limited tool. As defined by ORS 92.010(11), a property line adjustment is limited to relocating "*a* common property line between *two* abutting properties." (Emphases added.) That means *one* property line may be relocated and it must be a *common* property line between *two* abutting properties. Another important limitation is implicit in ORS 92.010(11), but reasonably clear when ORS 92.010(11) is read together with ORS 92.010(7)(b).[3[3]] The two properties that share the common property line that is to be adjusted must be "existing" units of land (*i.e.*, existing lots or parcels). That means the subdivision or partition plat or the deed or other legal instrument that created the existing lots or parcels must be recorded before the boundary lines that those lots or parcels create can be further adjusted. Property line adjustments may not be

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[3[3]] The language of ORS 92.010(7)(b) is quoted above in the text and expressly requires that the "existing unit of land" that is to be reduced in size by a property line adjustment must meet zoning ordinance requirements.

approved for proposed or hypothetical lots or parcels that do not yet separately exist as lots or parcels.

Returning to the property line adjustment that is at issue in this appeal, the first adjustment appears to relocate a single common boundary between the tall "L" shaped parcel on the western side of the tract and the large irregularly shaped parcel on the northern and eastern part of the tract. *Compare* Figures 1 and 2. No common boundary with the central small parcel is affected. If that first adjustment was all that the county's decision approved, it would appear to qualify as a property line adjustment.[4[4]] However, the challenged decision does not stop there and require that the deeds that will be necessary to bring the adjusted property line into existence be recorded. Rather, it purports to proceed immediately to approve a second property line adjustment that results in the final configuration shown in Figure 3 above. There are two problems with that part of the decision.

First, the decision approves two property line adjustments rather than the single adjustment that is permitted by the statutes. Second, the county's decision is not limited to adjusting a common property line between existing parcels. The second property line adjustment adjusts the common property line between the small rectangular parcel in the middle of the tract and the small parcel in the southwestern part of the tract that is shown in Figure 2. The southwestern parcel in Figure 2 is approved but did not exist when the county purported to adjust it in the second adjustment.[5[5]]

[4[4]] We do not reach or decide that question here.

[5[5]] We note that CCZLDO 3.3.150 purports to allow adjustments of a common boundary between two "or more" properties. *See* n 2. We question whether the county may allow property line adjustments for more than two existing parcels when ORS 92.010(11) limits property line adjustments to "two abutting properties." It is also not entirely clear to us what a "common" boundary between three or more abutting properties would look like. However, we need not resolve that question here. CCZLDO 3.3.150, like ORS 92.010(11), is limited to "a," *i.e.*, a single, common property line. The challenged decision approves adjustments to two common property lines. Even if the two property line adjustments could be viewed together as adjusting a single common property line between the three existing parcels in Figure 1, the county's decision does not simply relocate that single common boundary. Rather, it first reorients the part of that boundary that separates the two larger parcels (*compare* Figure 1 and Figure 2), and then severs the northern and southern halves and relocates the southern half of that boundary so that it is no longer contiguous with the northern half (*compare* Figure 2 and Figure 3). Severing a common boundary into two

What the county approved in this decision is in reality a partition of the large, currently existing "L" shaped parcel in Figure 1 into three parcels. The top part of the "L" is added to the largest of the remaining parcels in Figure 2. Most of the remaining bottom part of the "L" is added to the small rectangular parcel in the middle of Figure 2. The remaining part of the original "L" makes up the smallest of the reconfigured parcels in Figure 3. Because two of the new parcels created out of the original "L" shaped parcel are combined with the other two parcels in Figure 1, there are three parcels in the beginning and three parcels at the end. However, combining of parts of the original "L" shaped parcel with the other two parcels does not mean the original "L" shaped parcel was not partitioned.

It may be that the county's error can be simply corrected by (1) granting approval of the first adjustment, alone, and recording the deeds necessary to implement that property line adjustment, and (2) thereafter seeking approval of the second adjustment once the parcels created by the first adjustment legally exist. As we have already noted, there is no limit that anyone has called to our attention on the number of property line adjustments that can be approved, provided that *one* common property line is adjusted at a time and provided that the adjusted property line separates *existing parcels* rather than possible or hypothetical parcels.

B. *Goddard v. Jackson County*, 34 Or LUBA 402 (1998).

Before turning to the second assignment of error, we note that both parties appear to misread our decision in *Goddard*. Petitioners appear to read that case to stand for the proposition that what would otherwise be a proper property line adjustment becomes improper if it is too complex. Intervenors appear to take the position that the challenged property line adjustments survive scrutiny under *Goddard*, because they are much simpler than the property line adjustments that were at issue in that case: "[t]he two property line adjustments involved in this appeal are not 'complex.'" Intervenor's Brief 7.

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detached boundaries and moving one of those severed boundaries to an entirely different location is not simply relocating "a common boundary between two or more abutting properties."

The property line adjustment that we found improper in *Goddard* was a much clearer example of an improper property line adjustment. But the property line adjustment in *Goddard* was not improper because it was complex, it was improper because it did much more than simply relocate a common property line.

> "We agree with intervenors that the reconfiguration of the parcels within the subject property does not readily conform to the statutory definition of 'replat.' However, it does not necessarily follow that the approved reconfiguration of parcels constitutes a property line adjustment. A property line adjustment is limited, by its definitional terms, to relocation of common boundary lines.[6[6]] * * * ORS 92.010(11). As petitioners point out, the challenged decision approves a reconfiguration of property lines that moves entire parcels, including boundary lines that are not common with any of the property lines of the parcel (parcel 3) into which parcels 1 and 2 are moved.
>
> "Intervenors explain that the county in effect approved two separate property line adjustments, as shown in diagrams attached to intervenors' brief. The diagrams depict a first adjustment that moves all four boundaries of parcel 2 so that parcel 2 is located in the corner of parcel 3, notwithstanding that parcel 2 and 3 share only one common boundary. The second adjustment moves all four boundaries of parcel 1 into parcel 3, next to parcel 2, notwithstanding that parcel 1 and parcel 3 do not share a single common boundary line or touch at any point.
>
> "Intervenors' diagrams succinctly demonstrate that the reconfiguration approved by the challenged decision is *not* a property line adjustment as defined by ORS 92.010(11). Although the reconfiguration is not a 'replat' as that term is used in ORS 92.180 to 92.190 because it does not modify an existing plat, it resembles a replat in the scope of the changes it makes to property boundaries. A property line adjustment is essentially a *de minimus* form of replat. *See* ORS 92.190(3) (requiring that a property line adjustment be processed as a replat unless the local government authorizes other procedures). ORS 92.190(3) contemplates a fundamental distinction between a replat and a property line adjustment. That distinction is inherent in the definition of property line adjustment at ORS 92.010(11), which limits it to the 'relocation of a common property line between two abutting properties.'
>
> "We conclude that, because the challenged decision relocates property lines that are not common to abutting properties, it reconfigures the subject property in a manner that violates the definition of property line adjustment at ORS 92.010(11) and the statutory distinction between a property line adjustment and a replat. The

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[6[6]] This sentence can be read to suggest that a single property line adjustment may encompass relocation of multiple common boundary lines between abutting properties. We clarify in this opinion that a single property line adjustment decision may only approve the relocation of a single common boundary between abutting properties.

county's attempted reconfiguration is not authorized by any provision of ORS chapter 92 or any local provision directed to our attention." 34 Or LUBA at 414-15 (emphasis in original; footnote omitted).

The complex collection of property line adjustments in *Goddard* that were approved in a single county decision dramatically reconfigured the existing parcels. Our opinion in *Goddard* concluded that the approved reconfiguration was a replat in all but name, but because of the way ORS 92.010(12) defines replat, the desired reconfiguration could not be approved as a replat.[7] However, we also noted that the desired reconfiguration might be achieved by partitioning and combining existing parcels.[8]

C. Conclusion

We summarize the key conclusions we have reached above. First, petitioners appear to argue that, as a matter of law, serial property line adjustments cannot be used to achieve complex reconfigurations of existing parcels. We reject that argument. No statute or local provision that is cited by the parties or that we have been able to locate limits the number of property line adjustments that a property owner may submit for approval by the county. Petitioners' concern that almost any reconfiguration of existing parcels might be possible if

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[7] ORS 92.010(12) provides:

> "'Replat' means the act of platting the lots, parcels and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision."

In *Goddard*, we agreed with the intervenors that because the parcels at issue in that appeal were created by deed rather than by partition plats, the statutory replatting provisions did not apply.

[8] We explained:

> "Our analysis of ORS chapter 92 arguably creates a statutory void, where parcels lawfully created before 1973 by means other than a partition or subdivision plat pursuant to ORS chapter 92 cannot be reconfigured in the manner the county attempted here, *or where reconfiguration can only be accomplished through a process of vacation of boundary lines and subsequent land division.* * * *" 34 Or LUBA at 415 n 9 (emphasis added).

Although the emphasized language can be read to suggest that a two-step process (first vacate boundary lines, second partition or subdivide resulting parcels) is required, we see no reason why a single partition plat that proposes both dividing existing parcels and consolidating existing or newly divided parcels could not be proposed. Such a partition plat of parcels that were not initially created by a plat could be the functional equivalent of a replat of existing parcels that were initially created by a plat.

enough separate property line adjustments are approved appears to be a valid one. That potential for land owners to reconfigure existing parcels without following subdivision and partition requirements is not dramatically different from the potential for land owners to achieve *de facto* subdivisions of their land thorough serial partitions. The legislature has recognized the potential for avoiding subdivision requirements through serial partitions and limited the number of times a parcel can be partitioned in a single year. If the legislature perceives a similar need to limit serial property line adjustments, it presumably will amend the statutes to address that need.

Second, we also disagree with intervenors' argument that because there is no express limit on the number of property line adjustments that can be submitted in a single application, multiple property line adjustments may be submitted in a single application and approved in a single decision. Intervenors may be able to achieve their desired reconfiguration of their existing parcels by multiple property line adjustments. However, that does not mean that the relevant statutes and CCZLDO provisions are properly interpreted to allow the county to approve in a single decision as many hypothetical intermediate property line adjustments as are needed to create a fictional configuration that through a final property line adjustment achieves the desired reconfiguration. If intervenors wish to proceed by way of serial property line adjustments they must seek separate approvals for each of the needed property line adjustments and implement each step before proceeding to seek approval for additional property line adjustments that may be needed to achieve their desired reconfiguration of their parcels.

The first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

We conclude above that the challenged decision approves a *de facto* partition of intervenors' property. Under the CCZLDO, decisions that approve partitions are administrative decisions. CCZLDO 6.5.300(4)(D) requires that notice of partition decisions must

be provided in accordance with CCZLDO 5.7.100. CCZLDO 5.7.100(2) requires that notice of administrative decisions must be given to adjoining property owners and must explain that persons who are entitled to such notice have a right to seek a local appeal of the noticed decision.[9][9]

There is no dispute that the county (1) failed to process the disputed decision as an administrative decision, (2) failed to provide the required notice of decision, and (3) failed to provide the required opportunity for a local appeal. Petitioners argue that the county erred by not providing the required notice and opportunity for a local appeal before it approved the disputed application. We agree.

The second assignment of error is sustained.

The disputed application must be amended to propose a property line adjustment or must be submitted as an application for partition approval. In either event, a new application will be required. Accordingly, the county's decision is reversed. *Angius v. Washington County*, 35 Or LUBA 462, 464-66 (1999); *Seitz v. City of Ashland*, 24 Or LUBA 311, 314 (1992).

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[9][9] As adjoining property owners, petitioners would have been entitled to notice of the decision under CCZLDO 5.7.100(2), had such notice been given.

MINUTES

Lane County Planning Commission
Harris Hall - Lane County Courthouse

August 3, 2004
7:00 p.m.

PRESENT: Ed Becker, Mark Herbert, Juanita Kirkham, Steve Dignam, James Carmichael, members; Bill Sage, Kent Howe, Staff

ABSENT: Jacque Betz, Marion Esty

Ms. Kirkham convened the meeting at 7:00 pm. She called for public comment on issues not being covered by the commission that evening. Seeing no one she moved to the first agenda item.

I. PUBLIC HEARING: PA 04-5252

Bill Sage provided the staff report. He went through the process of errors and omissions and noted that the procedure applied to all three public hearings. He said there were several circumstances, under Policy 27, for requesting a conformity application. He said certain properties in 1984 may not have been recognized for uses, development, or management practices that would have put them into a certain category. He said the evening's hearings were the first hearings to be heard under the new errors and omissions policy in Policy 27. He outlined the criteria for the hearings. He said there were six or seven categories that had to be met before consideration under Policy 27 could be considered. He said once the criteria for Policy 27 were met then criteria for Goal 4 Policy 15 would have to be met. He said there were three general situations for the policy development.

1. Obvious Error - readily perceived as a necessary change that could be approved outright by the reviewer;

2. Subjective Determination – sufficient and verifiable documentation and findings of fact in the applicant's submittal for most reviewers to support a recommendation for approval; or

3. Marginal Circumstances – contested or soft facts where the review process could equally lead to a decision to approve or deny.

Mr. Sage stressed that the commission should not worry about setting precedent by their decisions since each application would be reviewed on the merits of the record and on a site specific basis. They should be aware that there were some situations where the decision could go either way depending on the individual philosophies of the members and the lack of compelling evidence for either approval or denial. He urged the commission members to vote as their individual backgrounds and experience in land use issues dictated.

Ms. Kirkham called for declarations of *ex parte* contacts or conflicts of interest. None were declared.

Ms. Kirkham opened the public hearing.

Jim Mann spoke as the applicant's representative. He said the application to make a correction from F1 zoning to F2 was clear and obvious. He outlined the characteristics of F1 and F2 zoning.

Showing an overhead projection of the property, Mr. Mann showed how the property had been cleared of a dwelling and accessory structures and outlined its topographic features and boundaries. He showed numerous photos of the property and noted that nearby properties were owned by large corporations and were not residential in nature. He said the Dorena area was more resource based in nature. He said the 1970's planning recognized the natural resource nature of the area. He acknowledged that there was some development along the roads but noted that nearby property was zoned F2. He said, in 1984 the Planning Commission did not have the information available that the current commission had access to.

In response to a question from Mr. Dignam regarding the tree plantation on the property, Mr. Mann said the plantation was 15 years old and had not been thinned or actively managed. He surmised that they were originally Christmas trees that had not been harvested. He said the untended plantation was now reduced to approximately seven acres.

In response to a question from Mr. Dignam regarding the topography of the site, Mr. Mann said the entire site was flat.

In response to a question from Ms. Kirkham regarding the size of the adjoining forest properties, Mr. Mann called attention to the application. He said lots owned by Weyerhaeuser to the east were 34, 1.5, and 55 acres. He added that the other site was 33.4 acres.

In response to a question from Ms. Kirkham regarding soil type on the site, Mr. Mann said almost all of the property was classified as Soil Type 20b. (Silty Clay with a forestry cubic foot per acre per year rating of 130)

Jim Just, 39625 Almond Drive, Lebanon, spoke for Goal One Coalition and Land Watch Lane County. He distributed written material to the commission. He said the thing that was most relevant was the ownerships of the properties in the area in 1984. He said the subject parcel had been part of a much larger site, owned by Bohemia Lumber Company, in 1984 that had been primarily forest use.

Mr. Just said the sites contiguous to the parcel were also part of a much larger contiguous ownership. He noted that the lot had not had legal access and stressed that there was nothing on the record of the use of the property other than being part of a large forest operation. He said the land had been correctly zoned F1 in 1984.

In response to a question from Mr. Becker regarding whether the land could support forest timber productivity, Mr. Just said the land was capable of producing forests even if the predominate use of the land had not been forest use in 1984. He said there was nothing in the policy criteria that addressed soil types. He noted that a farm operation could be counted as a forest use. He reiterated that the land was part of a forest operation if it had been used for forest purposes.

Mr. Becker clarified that Mr. Just was saying that the land, in 1984, more resembled F1 than F2 zoning because it was part of a large forest operation that had no non forest uses on the property.

Laurie Segel, 120 West Broadway, spoke on behalf of 1000 Friends of Oregon. She requested a continuance of the hearing because she had not received notice. She acknowledged that she was not part of the legal notice required of staff but noted that she had been confused by the way the hearings had been posted. She said she wanted time to prepare her information.

Mr. Sage said the County was required under state law to provide the following notice of hearings:

1. Notice in *the Register Guard* 20 days prior to the hearing. Mr. Sage noted that notice had been posted in that paper on July 14.

2. Post the Notice on the Property which had occurred.

3. A Mailing List of surrounding Property Owners which had occurred.

Mr. Sage noted that all of these notice requirements had been met. He said the record showed that staff had met the requirements of the law but noted that the commission could grant a continuance if it so desired. He added that the written record could be left open but noted that the applicant would have a chance to rebut any new evidence. He said the commission could also vote that the requirements of notice had been met. He stressed that one of the statewide planning goals and one role of the planning commission was to provide opportunity for citizen involvement.

Ms. Kirkham called for rebuttal from the applicant.

Mr. Becker noted that he had not seen the planning commission meeting in the events section of the *Register Guard* that day. He noted that this had been a point of confusion for him.

Mr. Mann said he was not opposed to leaving the record open for seven days but reserved the right to address any new evidence submitted. He added that there *was* access to the subject property contrary to the testimony of Mr. Just. He said there had been a dwelling there at one time that had access to the county road. He noted that there was frontage all along that county Road. He added that the owners would have to work with County Public Works to decide where a new driveway would be located.

Mr. Mann called attention to criteria for F1 zoning. He said F1 referred to commercial forestry. He said F2 zoning did not specify commercial forest uses. He said the applicant had shown that the property had not, in the recent past been under commercial forest management.

In response to a question from Mr. Carmichael regarding whether changing zoning because the land had not been used was setting precedent, Mr. Sage said Goal 4, Policy 15 required that that non forest uses had been present on or adjacent to the property. He reiterated that site by site assessments had to be made and added that decisions were not precedent setting but were based on compliance with criteria and standards that would eventually establish a clearer policy. He said evaluation of this particular site was what was required from the commission at this point.

Mr. Herbert suggested leaving the record open for seven days but said he was not interested in continuing the hearing.

Mr. Dignam, seconded by Mr. Herbert, moved to leave the record open for seven days with a further seven days for the applicant to rebut newly submitted information.

Mr. Dignam urged the public to be cautious when relying for information on public hearings in the general announcement sections of the newspapers.

The motion passed unanimously.

Mr. Sage said the written record would remain open until August 10, at 5 pm. He said the applicant would have until August 17, at 5 pm. to address any new evidence. He said the commission would deliberate on September 7, during its 5:30 work session.

II. PUBLIC HEARING: PA 04-5276

Ms. Kirkham called for declarations of *ex parte* contacts or conflicts of interest. None were declared.

Ms. Kirkham opened the public hearing.

Al Couper spoke as the applicant's representative. He noted that F1 and F2 were distinctive in that F1 was owned by large firms and access by logging roads with no utilities or services. He said F2 land was much more intensely developed. He showed an overhead projection of the land in question. He said the land had been zoned F2 originally.

Mr. Couper said Lane County had passed an ordinance in 1984, which changed the designation on the subject property. He said the ordinance contained a numerical list of tax lots that were intended to be changed. He said the one of the tax lots of the contiguously owned properties, (tax lot 400), had been left off the list.

Mr. Couper said the County had used assessor's maps as a basis for parcelization and had made an error in changing the zoning. He noted that the subject property was actually seven tax lots and three as the county had assumed in 1984. He showed a map of the current parcelization of the property that was on record with the county. He said the parcels were made in full conformance with state law. He said none of the parcels were more than 80 acres.

Mr. Couper said the language of the characteristics for F1 and F2 were unclear and confusing. He said numerous hearings officials were on record complaining about the language. He outlined the criteria, once again, for the commission.

Mr. Couper showed an overhead projection of a map of the area. He said 79 percent of the parcels contiguous to the subject property were 10 acres or less with rural residential and commercial development. He noted that the zoning map supported his statements.

Mr. Couper said he supported the Lane County regulations that stated that residential development could not occur on F1 lands.

In response to a question from Mr. Becker regarding whether the land in question had a road system intended for forest management, Mr. Couper said there was not. He noted that the property had been logged and had remnant logging roads.

There was some question over the definition of roads on the property.

Mr. Becker said it was clear that the property had been intensively used for forestry.

Jim Just, Goal One Coalition and Land Watch Lane County, 39625 Almond Drive, Lebanon, distributed written material to the commission. He called attention to the last page of his material, he said the lists of the tax lots was not official and was not complete or definitive. He said the control document was the zoning map that was approved by the Board of Commissioners and LCDC.

Mr. Just said the property line adjustments done on the site were not legal and would be illegal in Coos County. He said the property line adjustments were in fact re-platting and was not a legal act.

Laurie Segel 120 West Broadway, spoke on behalf of 1000 friends of Oregon. She said the land in question had the characteristics of the land in 1984 that were predominately F1 in nature. She stated no residences currently existed on the land in question and none existed in 1984. She said the entire site had been under one ownership and was approximately 300 acres in size. She said the ownership of the area in 1984 showed a commercial forest use. She said the development outside the site was not relevant to the question. She said the available evidence also showed that the site was contiguous to other forest use lands in 1984.

Ms. Segel stressed that, since the applicant was alleging that an error was made in 1984, the commission should look at what existed in the area in 1984. She noted that no services were available to the subject area. She said the facts showed that in 1984 the area in question fit the description of F1 lands.

Gwendolyn Farnsworth, Rattlesnake Road, displayed photos of the land taken in 1986 showing that the land was forested at that time. She showed photos of the surrounding properties and their uses. She said there was no access to the property other than logging roads and emphasized that there were no services available on the subject site. She said the surrounding properties were not relevant to the issue. She submitted her photos into the record.

In response to a question from Mr. Becker regarding the timber harvesting on the subject property, Ms. Farnsworth said the subject property had been logged as one entity and came out to the north on Rattlesnake Road.

Ms. Farnsworth requested that the record be left open for seven days.

Thom Lanfear, 38019 Lobo Lane, spoke as an abutting land owner. He said policy 27 would have the commission process the application based on an error made in 1984. He said there was no error made at that time. He said it was doubtful that the issue should even be in front of the commission. He said it would be a good future discussion for the commission to talk about the intent of the Board of Commissioners in the matter. He reiterated that staff had made the correct decision in 1984. He said there was no real staff perspective on whether the lot line adjustments were done correctly.

Mr. Lanfear suggested that if the commission was going to base a decision on the current lot lines, then it should look at individual lots.

In response to a question from Mr. Dignam regarding the reason why he thought staff had not made an error, Mr. Lanfear read law as it was in 1984. He said the legal lots had not shown up until 1985 when the law changed in Oregon.

Ms. Kirkham called for applicant rebuttal.

Mr. Couper asked that two additional weeks be granted to both sides so all legal questions could be addressed. He stressed that the property line adjustments done on the site were done legally. He acknowledged that the law had been changed since that time. He stressed that there was no re-plat in the case. He said he would be happy to submit to another legal lot verification process. He said services were available in the neighborhood of the lot.

Mr. Couper said F2 land provided 16 percent of the harvested timber in the State.

Mr. Sage said staff needed to review all of the new information submitted into the record. He suggested allowing the two-week time periods for submittals requested. He said the written record could close on August 17, and final rebuttal could be due on September 7. He suggested that the Commission deliberate on October 5, at the 5:30 work session.

Mr. Herbert, seconded by Mr. Dignam, moved to accept Mr. Sage's recommendation. The motion passed unanimously.

III. PUBLIC HEARING: Request for approval of a conformity determination amendment the Rural Comprehensive Plan

Ms. Kirkham opened the public hearing.

Mr. Sage said there was a scriveners error that needed to be corrected within Zoning Plot 525 for the rural community of Walterville He called attention to exhibit C of the staff report which showed the error which occurred when McKenzie Watershed Zoning Plots were readopted in May 2002. He said the line around the subject property, tax lot 204, was what needed to be corrected. He recommended that the commission approve the correction to comply with the correctly drawn zoning boundary from 1984 to 2002.

Jim Just, , asked that the record be left open for seven days to confirm that the zone change was consistent with the plan map.

Laurie Segel, 120 West Broadway, complained that she had not known about the hearing. She suggested DLCD be notified about county planning hearings.

Mr. Sage said, if the commission wished to grant the request for leaving the record open, the Plan Map could be put into the record in the first seven days. He said the issue could be added to the deliberations on September 7, 2004.

Mr. Becker applauded the County staff for correcting errors. He suggested that the property owners be notified.

Mr. Herbert said it would be in the best interest of all concerned if the property owner were notified, as a party of interest that their property had been inadvertently zoned incorrectly and there was a public hearing on correcting the matter.

Mr. Dignam suggested that there be less process to correct a simple error. He said keeping the record open would add no benefit.

Mr. Dignam, seconded by Mr. Becker, moved to approve the correction of the scrivener's error on zoning map plot 525.

Mr. Becker added a friendly amendment, which was accepted, to have staff insure that the plan map definitely agreed with the zoning map.

Mr. Sage said the record should be left open if the request were not frivolous. He stressed that one of the basic goals of the commission was to insure public input and noted that there was no rush on the particular item.

Mr. Herbert said the request of leaving the record open was a reasonable one and was not onerous to grant.

The motion passed 3:1:1 with Ms. Kirkham voting in opposition and Mr. Herbert abstaining.

Planning Director Kent Howe noted that it was required to leave the record open if it had been requested. The motion was withdrawn.

Ms. Kirkham, seconded by Ms. Esty, moved to keep the record open until August 10, 2004 with deliberation in September. The motion passed 4:1 with Mr. Dignam voting in opposition.

The meeting adjourned at 9:30 pm.

(Recorded by Joe Sams)
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MINUTES

Lane County Planning Commission

October 5, 2004, 5:30 p.m

PRESENT: Juanita Kirkham, Chair; Ed Becker; Jacque Betz; Marion Esty; Mark Herbert; Steve Dignam, James Carmichael, members; Kent Howe, Bill Sage, Staff
ABSENT: NA

I. WORK SESSION:

Ms. Kirkham convened the meeting at 5:30 pm. She called for public comment on matters that were not on the night's agenda.

Laurie Segel, 1000 Friends of Oregon, urged the commission to quickly fill its vacancies.

Jozef Siekiel-Zdzienicki asked for information on whether the by-laws of the commission were available to the public.

Planning Director Kent Howe affirmed that they were available and explained the process for obtaining them.

The commission reviewed the Minutes of March 2,

> Mr. Herbert, seconded by Mr. Carmichael, moved to approve the minutes of March 2, May18, and September 7.

Mr. Dignam commented on the lack of specific enough minutes and asked that his expressed rationale for supporting or opposing a motion be clearly stated in future minutes.

> The motion passed unanimously.

Deliberations session: PA 04-5252 and PA 04-5276.

Bill Sage thanked the Commission members for being flexible by receiving the packet of policy and archive materials during the previous week. He said it was important that the Commission had taken the opportunity to complete the record of information on policy issues prior to tonight's deliberations on the two separate applications. He said the first thing the Commission needed to do that evening was to have a policy discussion on the intent of specific language in Lane Code 13 and Lane Code 16 during the 1984-1986 period and to and adopt an interpretation of Policy 27a.ii. that they could use as a basis for making their recommendations to the Board on the merits of the two site-specific applications. He briefly outlined the memorandum they had received on Policy 27.a.ii. and distributed summaries of the records and guidelines the commission could use that evening to make their decisions on each of the applications.

He said the guidelines for PA 04-5252 (Mann-Everett) summarizes the findings and documentation they had previously received on the parcel history and land use development of

that subject property. The factors under consideration specific to the application and the characteristics between F1 and F2 land designations were addressed in the guidelines.

He discussed the guidelines for PA 04-5276 (Couper/Kronberger) summarized the process for deciding between discrepancies of code text and actual zoning maps that the Commissioners would be using for making a determination in the second application to be reviewed that evening. He noted that there had previously been a trend toward favoring maps in making that distinction but stressed that this was not a required course of action by the Commission.

Summarizing the memorandum previously distributed to the commission, Mr. Sage said Policy 27 was a 2004 policy that was used to correct errors and omissions to maps made in the past that were found during periodic review. He stressed the importance of knowing the chronological pattern of how original policies that were adopted and asked the Commission to think about the policy that had been written in 2003 and use *that* policy to interpret present policy.

Mr. Herbert said he felt there was fairly clear direction to rely on precedent and common sense in the absence of clear language. He said it was clear to him that he would be most in favor of policy option number "2" as presented in the staff memorandum that was to rely on common sense. He said to not do that would set a dangerous precedent.

Ms. Esty and Ms. Betz agreed with Mr. Herbert's statements.

In response to a question from Ms. Esty regarding clarification of his statements, Mr. Herbert said Option 2 allowed a look at the intent of the drafters of documents and make a common sense interpretation. He said the other option was too narrow and would not allow the use of good judgment.

Mr. Dignam said his support of Option 2 was predicated on a statement from Mr. Sage regarding erroneously included statements in Lane Code. He asked for the definition of erroneous in that case.

Mr. Sage said both land use law and personal experience were a factor. He said that in the early 1980s the "legal lot" definition in Lane Code 16 had been created by County staff out of the definition of "tract" in the ORS rulemaking concerning partitioning and subdivision standards that was applicable in Lane Code 13 that was retroactively very restrictive on property owners who had purchased their property by deed prior to 1975. In turn, the County had for a short period between 1983-1986 erroneously applied that as a factor in drafting a policy. He stressed that General Plan Policies are separate from implementing regulations and often require interpretation of the intent and as occurred in 1986, revisions to correct. He said that again the Commission needed to interpret this policy under today's common sense approach.

Mr. Sage stressed that a large amount of policy had been passed at that time in a very rapid manner. He said there was really no opportunity for in-depth analysis of that policy before decisions were made in the rush to adopt the General Plan Policies in the Rural Comprehensive Plan and zoning designations in 1983-84.

> Mr. Herbert, seconded by Ms. Betz, moved to apply a common sense interpretation to Policy 27 that a legal lot today was a legal lot in 1984, based on the spirit of the law rather than a strict interpretation on the text language.

(Staff note to the record: This motion was based on the Commission's review of the clarification of ORS 92 by HB 2381 in 1985, and Lane County's adoption of three ordinances in 1986 in response to the enactment of HB2381, that discrete parcels created lawfully by recorded deed or real estate contract prior to the 1983-1986 period were not merged during that period, and were during that period, and are today, discrete legal lots.)

Mr. Dignam said he would support the motion because it appeared that there had been aa misinterpretation of state law in drafting Lane Code in the 1983-84 period.

Mr. Carmichael questioned whether there would be any requirements under Goal 4.

Mr. Sage said the commission would still have to consider qualifications of individual cases under the conformity determination policy 27 before considering GoalGoal 4, policy 15 characteristics.

Mr. Carmichael said the two applications being deliberated on that evening were getting more and more complicated. He read from County policy that said County policy provided direction for policy makers. He said the facts in these types of situations were better considered under Goal 4.

The motion passed unanimously.

Rather than 'common sense' Mr. Herbert said the argument could be framed as strict interpretation versus the spirit of the policy.

Mr. Herbert, seconded by Ms. Betz, moved to forward a recommendation to the Board of County Commissioners to amend the RCP General Plan Policies Goal Two , Policy 27(a)(ii) to read similar to Policy 21(d)(2) as adopted in Ordinance PA 921 on September 10, 1986 and the current goal 4 policy, 15(b) and (c) criteria substituted for "19(c)"; "(2): *Inappropriate F-1 zoning where the criteria of RCP Forest Land Policy 19(c)* [15(b) and (c)] *indicate that F-2 zoning is more suitable."*

The motion passed unanimously.

II. Deliberation; PA 04-5252

Mr. Sage outlined the Deliberations Checklist distributed to the commissioners. He said the commission would have to make a decision, not just on 1983 policy, but also today whether the parcel was better zoned under F1 or F2.

Mr. Carmichael said he was ready to make a decision on that particular piece of property.

There was general consensus to review the checklist before making a decision.

Mr. Herbert said he was satisfied that the parcel was a developed piece of property in 1981.

Mr. Carmichael stressed that it was not important to agree on each point of the checklist.

Members took a few minutes to review the checklist document.

In response to a question from Mr. Dignam regarding whether it was necessary for the application to meet all of F1 or F2 criteria, Mr. Sage said it was a decision that had to be made at the commission level whether the characteristics of one or the other were predominant. He said 51 percent one way or the other was all that was necessary.

Mr. Becker said considered F2 the predominate characteristic for all the list items.

Mr. Carmichael said he was not convinced that there was a residence on the policy. He said F2 Impacted Forest LandLand zone predominated.

Ms. Esty agreed and said F2 ImpactedImpacted zone was her interpretation for the entire list.

Mr. Herbert and Ms. Betz agreed as well.

Mr. Dignam said F2 was his determination.

Ms. Kirkham agreed and said she had come to the same determination.

> Mr. Becker, seconded by Ms. Esty, moved to forward a recommendation to the Board of County Commissioners for approval of a conformity determination amendment to the Rural Comprehensive Plan (RCP) pursuant to RCP General Plan Policies - Goal 2, Policy 27 (a)(ii) to redesignate 34.2 acres from non Impacted Forest LandLand (F-1, RCP) to Impacted Forest Land (F-2, RCP) for a parcel identified on the Lane County Assessor's Map 21-01-30 as tax lot 300.
>
> The motion passed unanimously.

III. Continuation of Deliberations: PA 04-5276

Mr. Sage said the applicant's representative had made two arguments when submitting the application. He said the applicant contended that a discrepancy between a map that was adopted for zoning and a reference in the ordinance which delineated a list of parcels that were supposed to be included in the zoning decision. He said the parcel had been delineated F-2 on the map and had then been rezoned F-1 on the interim map. He said the second zoning put in place included everything that had been reviewed by LCDC and said, for clarification, "Exhibit C" needed to be reviewed. He noted that the subject property, "tax lot 400" had not been put on that list. He said all this had been substantiated in the final rebuttal attached to the meeting packet.

Mr. Sage said the decision was to decide whether the map of the area or the text of the ordinance were predominant. He said the myth was that maps rule but noted that this was not necessarily the case. He said there was no absolute dominance between map and text. He said the commission needed to make a policy decision as to which represented the appropriate zoning.

In response to a question from Ms. Betz regarding how often maps were changed, Planning Director Kent Howe said text amendments usually had to do with Lane Code. He said the text in this case, had to do with township-range-section and specific tax lots. He said the text was generally considered to be findings that supported the data on the maps.

Mr. Carmichael clarified that the text argument meant changing to F2 and the map argument meant leaving the property F1.

In response to a question from Mr. Dignam regarding the reason why the same checklist was not being used, Mr. Sage said the applicant had made a case for both sides. He added that in the final rebuttal there was a desire to use the "mapping error" criteria policy.

Mr. Dignam clarified that it was staff's intent that the matter be evaluated under the discrepancydiscrepancy between map and text policy.

Mr. Herbert commented that the staff recommendation was going against the policy discussion in the first hour of the meeting. He said the error was made in the text & should properly remain F1.

Mr. Becker said he was also convinced that the land should remain zoned F1.

Mr. Carmichael said, in this instance, there appears to have been an intent to dupe the commission. He said any rational person could see that F1 was what the land should be appropriately zoned. He said the property should stay F1, but noted that there should be a process for the applicant to return in the future.

Mr. Dignam asked what data Mr. Herbert's comments were based on.

Mr. Herbert called attention to "Figure 1" of the map. He said "Figure 2" showed that tax lot 400 had not been included in that. He said if the sole criteria was to decide whether the map or the code text was wrong, then he thought it was a text error.

In response to the comments made by Mr. Carmichael, Mr. Herbert said planning consultants had to advocate for their clients within the context of the law. He said he had to look at the spirit of the intent at the time of the zoning.

Mr. Dignam said he was inclined to support the map under the approach taken by Mr. Herbert. He said he found several aspects of the application that could in the future lead him to support changing the zoning to F2 but not under the criteria used for the decision that evening.

> Mr. Dignam, seconded by Mr. Herbert, moved to forward a recommendation to the Board of County Commissioners for denial of a conformity determination amendment to the Rural Comprehensive General Plan Policies - Goal 2, Policy 27(a)(vii) to redesignate 82.6 acres from non impacted Forest land (f-1, RCP) to Impacted Forest Land (F-2 RCP) for a portion of the parcel identified on the Lane County Assessor's Map 19-01-17 as tax lot 401.
>
> The motion passed unanimously.

Planning Director Howe said a joint meeting with the Board of County Commissioners was scheduled for November 9 at 5:30 pm. He said Region 2050 would be the topic. He said it would be a dinner work session.

The meeting adjourned at 7 pm.

(Recorded by Joe Sams)
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