

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER  
NO: 17-11-28-13

In the Matter of Electing Whether or Not to Hear an Appeal of a Hearings Official Affirmed Decision Approving a Forest Template Dwelling in the Impacted Forest Lands Zone (F-2); Assessor's Map 17-01-32-30, Tax Lot 900 (File No. 509-PA17-05111/Harwood Farms).

**WHEREAS**, the Lane County Hearings Official has made a decision to affirm a Planning Director approval of a forest template dwelling application in Department File No. 509-PA17-05111; and

**WHEREAS**, the Lane County Planning Director has an appeal of the Hearings Official's decision to the Board of County Commissioners pursuant to LC 14.515(3)(f)(ii); and

**WHEREAS**, after reviewing the appeal, the Lane County Hearings Official elected to not reconsider and to affirm the decision; and

**WHEREAS**, Lane Code 14.600 provides the procedure and criteria that the Board follows in deciding whether or not to conduct an on the record hearing for an appeal of a decision by the Hearings Official; and

**WHEREAS**, the Board of County Commissioners has reviewed this matter at a public meeting of the Board.

**NOW, THEREFORE**, the Board of County Commissioners of Lane County finds and **ORDERS** as follows:

1. The appeal does not comply with the criteria of Lane Code 14.600(3) and arguments on the appeal should therefore not be considered. Findings in support of this decision are attached as Exhibit "A."
2. The Lane County Hearings Official decision dated September 29, 2017 and the letter affirming the decision dated October 11, 2017 attached as Exhibit "B," that found relevant approval criteria are met are affirmed and adopted by the Board of County Commissioners as the County's final decision.

**ADOPTED** this 28th day of November, 2017.



**Pat Farr, Chair**  
**Lane County Board of Commissioners**

APPROVED AS TO FORM

Date 11-17-17 Lane County



OFFICE OF LEGAL COUNSEL

## Order Exhibit "A"

### FINDINGS IN SUPPORT OF THE ORDER

1. The property subject to this application, hereinafter referred to as the "subject property," is located on tax lot 900, assessor's map 17-01-32-30, about 1.8 miles east of the Springfield Urban Growth Boundary, on the north side of Cedar Flat Road. The subject property is vacant, is about 33 acres in size, and is owned by the Applicant. The subject property is not contiguous to any other properties under the same ownership and therefore, is not part of a tract.
2. The subject property was verified as a preliminary legal lot after a property line adjustment with file PA 07-05105. A copy of this file is included in the application file. The Applicant requests that this decision also serve as final notice of File No. PA 07-05105, pursuant to Lane Code 13.020.
3. The subject property has an elevation of approximately 1,000 feet above mean sea level (MSL) along the western property boundary, gradually slopes downward toward the east, and in the eastern and northern portions of the property, contains steep (greater than 40 percent grade) slopes oriented towards the east. At its lowest grade, the property has an elevation of approximately 740 feet above MSL in the northeastern site corner. It is designated Forest in the Lane County Rural Comprehensive Plan, and is zoned Impacted Forest Land (F-2, RCP), consistent with that plan designation. The majority of the subject property is forested, except for areas within the southern portion of the site dedicated to an existing driveway.

Properties abutting the northwestern, western, and southern property boundaries of the subject property are also zoned Impacted Forest Lands (F-2). Abutting properties to the northeast and east are zoned Rural Residential (RR-5). The surrounding area can generally be characterized as forested and/or developed with a rural level of residential dwellings and accessory structures. There are a number of dwellings in the vicinity of the subject property.

The forest dwelling is not located near existing roads, but is proposed to be located near existing development on adjacent properties. A dwelling exists on Tax Lot 901 approximately 790 feet to the south and five dwellings are located approximately within 1,700 feet of the proposed location of the dwelling. The applicant indicates that the dwelling will be located within the second most level portion of the site. The home site is in the central western portion of the site, setback 201 feet from the nearest property line to the east and several hundred feet from the nearest road, Cedar Flats Road. This location contains slopes of approximately five to ten percent. The south-central portion of the site contains slopes that are in the range of approximately five percent. By comparison, steeper slopes over 25 and 40 percent are located in the northern and eastern portions of the site. The Applicant's site plan depicts the location of slopes greater than 25 percent and shows that the proposed dwelling will be setback approximately 175 feet from these steeper slopes. The depiction of steep slopes within the site appears to be consistent with Lane County GIS contour data and LiDAR data. The proposed dwelling is setback at least 30 feet away from any ravine, ridge or slope greater than 40 percent.

4. Approximately 62 percent of the subject property contains Soil Unit 104G, Peavine silty clay loam, 30 to 60 percent slopes, which is estimated to produce approximately 184 cubic feet per acre per year of wood fiber per NRCS data. Therefore, the 11-parcel template test required by Lane Code 16.211(5)(c)(iii) is applicable to this application. In addition, Lane Code 16.211(5)(c)(iii)(bb) requires that at least three dwellings existed on January 1, 1993, and continue to exist on lots located within a 160 acre square centered on the subject property. The following table documents the 11 parcels relied upon by the Applicant to satisfy Lane Code 16.211(5)(c)(iii):

Count	Assessor's Map	Tax Lot	Date of Creation	Documentation / Deed / LLV / Partition
1	17-01-32-30	700	1965	Lot 1 of M65-92
2	17-01-32-30	803	1978	Parcel 2 of M66-77
3	17-01-32-30	804	1977	Parcel 1 of M28-77
4	17-01-32-30	805	1977	Parcel 2 of M28-77
5	17-01-32-30	806	1978	Parcel 1 of M66-77
6	17-01-32-30	810 & 811	1977	Parcel 3 of M28-77
7	17-01-32-30	1100	1971	Parcel 1 of M71-46
8	17-01-32-30	1101	1971	Parcel 2 of M71-46
9	17-01-32-30	1300	1946	Record Vol. 300, Page 39
10	17-01-32-30	1700	1955	39547 / R1107/60080
11	18-01	1400	1941	

5. Lane Code 16.211(5)(c)(iii)(bb) requires that at least three dwellings existed on January 1, 1993, and continue to exist on lots located within a 160 acre square centered on the subject property. The applicant has relied upon tax lot 700, developed with a dwelling in 1946; tax 110, developed with a dwelling in 1950; and tax lot 1101, developed with a dwelling in 1972, to satisfy this standard. These dwellings continue to exist.
6. The subject property is located within the McKenzie Fire & Rescue District. The record contains information regarding the locations of nearby fire stations, the firefighting equipment at nearby fire stations, and the adequacy of available firefighting equipment. The majority of areas along the proposed driveway contain relatively gradual slopes not exceeding 16 percent grade. The Applicant indicates that short segments of the driveway less than 100 feet in length may be more than 16 percent, but less than 20 percent, in slope.
7. The subject property has frontage on Cedar Flat Road, a rural Lane County maintained road and is functionally classified as a Rural Local Road. Access to the proposed building site on the subject property will be via an existing driveway which crosses tax lot 901, assessor's map 17-01-32-30.
8. The applicant submitted the request to establish a forest template dwelling in the Impacted Forest Lands (F-2) zone to Lane County Land Management Division on February 3, 2017. On February 28, 2017, staff deemed the application incomplete and requested additional information. The applicant requested that the application be deemed complete on May 18, 2017. Accordingly, staff deemed the application complete as of that date. On May 22, 2017, referral responses were solicited from affected agencies, service providers and surrounding property owners. On July 24, 2017, the Planning Director approved the application, authorizing a dwelling on the subject property, and notice of pending land use decision was mailed in accordance with Lane Code 14.100(4) and LC

14.070(1). On August 7, 2017, LandWatch Lane County submitted a timely appeal. Notice of public hearing on the appeal was mailed on August 16, 2017.

9. On September 7, 2017, the Lane County Hearings Official conducted a public hearing. The written record was held open until September 14, 2017, with opportunity for rebuttal by September 21, 2017 and applicant's final written argument by September 28, 2017. On September 29, 2017, the Lane County Hearings Official issued a decision approving the application. Notice of the Hearings Official's decision was mailed to the applicant and all parties of record on September 29, 2017.
10. On October 11, 2017, the appellant filed a timely appeal and requested that the Board of County Commissioners not conduct a hearing on the appeal and deem the Hearings Officer's decision the final decision of the County, pursuant to LC 14.515(3)(f)(ii).
11. On October 11, 2017, the Hearings Official reviewed the appeal and affirmed his decision without further consideration pursuant to LC 14.535(1).
12. In order for the Board to hear arguments on the appeal, Lane Code 14.600(3) requires one or more of the following criteria to be found by the Board to apply to the appeal:
  - The issue is of Countywide significance
  - The issue will reoccur with frequency and there is a need for policy guidance
  - The issue involves a unique environmental resource
  - The Planning Director or Hearings Official recommends review
13. Land Management Division has consistently held that a replat is not required for adjustment of parcels in a finished and not recorded minor subdivision plat. The Hearings Official's decision describes that Lane County did not adopt property line adjustment procedures until January 8, 2010. Land Management Division has consistently held that before that time, property line adjustments affecting lots or parcels in a finished minor subdivision plat could have been lawfully executed through recording of a property line adjustment deed. Furthermore, Land Management Division has consistently held that after recording of a property line adjustment deed not reviewed by the County, an applicant would need to obtain legal lot verification from Lane County to determine whether the property is or remains a legal lot or parcel.

Both the Hearings Official's original decision dated September 29, 2017 and his decision not to further consider the application dated October 11, 2017 support the above-described practices.

With regards to other issues raised on appeal, the Hearings Official's initial decision affirming the Planning Director's approval of the forest template dwelling application, dated September 29, 2017 (**Exhibit B**) contains extensive discussions of LC 16.211(5)(b), the applicable provisions of ORS 92, and the fact pattern in the application, and either dismissed or addressed all allegations of error. Responses to allegations of error in the Hearings Official's decision are consistent with Land Management Division practices pertaining to review of property line adjustments recorded prior to January 8, 2010.

The Hearings Official has reviewed allegations of error in the appeal, and found in his decision not to further consider the application dated October 11, 2017 that allegations of error have been adequately addressed in the decision and that reconsideration is not warranted.

Therefore, the Planning Director does not believe that the implications of the decision are of countywide significance.

14. Forest template dwelling applications are a common land use application made to the Land Management Division. Irrespective of the frequency of this type of application, Land Management Division has consistently held that a replat is not required for adjustment of parcels in a finished minor subdivision plat and that property line adjustments could have been lawfully executed through property line adjustment deed recorded prior to January 8, 2010. With regards to other issues raised on appeal, the Hearings Official's initial decision affirming the Planning Director's approval of the forest template dwelling application, dated September 29, 2017 (**Exhibit B**), contains extensive discussions of LC 16.211(5)(b), the applicable provisions of ORS 92, and the fact pattern in the application, and either dismissed or addressed all allegations of error, which are consistent with Land Management Division practices.

In the event that a comparable proposal and fact pattern comes before the Land Management Division, the Hearings Official's decision presents a reasonable interpretation of and guidance on ORS 92. Therefore, the Planning Director finds that there is not a need for further policy guidance.

15. The subject property does not constitute or contain a unique environmental resource. To the extent that the forested areas of the property constitute a unique environmental resource, the provisions of Lane Code 16.211(5) implement the intent of the Impacted Forest Lands Zone (F-2). Therefore, issues raised on appeal do not involve a unique environmental resource.
16. Based on the above analysis, the Planning Director recommends the Board elect not to conduct an on the record hearing for the appeal, affirm, and adopt the Lane County Hearings Official decision as the County's final decision, and remain silent on the Hearings Official's interpretations of ORS 92 given that the County does not have deference on interpretation of State law.
17. Additionally, the Hearings Official did not recommend in his decision or letter of affirmation that the Board of Commissioners conduct an on the record hearing for the appeal.
18. To meet the requirements of Lane Code 14.600(2)(b), the Board is required to adopt a written decision and Order electing to have a hearing on the record for the appeal or declining to further review the appeal.
19. The Board has reviewed this matter at its meeting of November 28, 2017, and finds that the appeal does not comply with the criteria of Lane Code Chapter 14.600(3), declines further review, and elects not to hold an on the record hearing for the appeal.
20. The Board affirms and adopts the Hearings Official decision of September 29, 2017, affirmed by the Hearings Official on October 11, 2017, as the County's final decision in this matter, and remains silent on interpretations of ORS 92 made by the Hearings Official in his decision.

**LANE COUNTY HEARINGS OFFICIAL  
APPEAL OF A PLANNING DIRECTOR APPROVAL OF A TEMPLATE  
DWELLING WITHIN AN F-2 DISTRICT**

**Application Summary**

On February 3, 2017, a request to establish a dwelling in the Impacted Forest Lands (F-2) zone was submitted to Lane County Land Management Division by Jed Truett, an agent for the Applicant, Harwood Farms. At the request of the Applicant, staff deemed the application complete on May 18, 2017. On July 24, 2017, the Director issued a determination that the subject property complied with the applicable standards and criteria for a Forest Template Dwelling pursuant to LC 16.211(5) and (8). Notice of the determination was mailed to surrounding property owners. On August 7, 2017, a timely appeal was submitted by LandWatch Lane County.

**Parties of Record**

Harwood Farms	LandWatch Lane County	Carl Mueller
Andrew Mulkey	Robert Emmons	Amy Harwood
Nancy Sampson	Helen Tomsett	Teresa Coble
Jed Truett		

**Application History**

Hearing Date: September 7, 2017  
(Record Held Open Until September 28, 2017)

Decision Date: September 29, 2017

**Appeal Deadline**

An appeal must be filed within 12 days of the issuance of this decision, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

**Statement of Criteria**

Lane Code 16.211(5)&(8)

**Findings of Fact**

1. The property subject to this application, hereinafter referred to as the “subject property,” is located on tax lot 900, assessor’s map 17-01-32-30, about 1.8 miles east of the Springfield Urban Growth Boundary, on the north side of Cedar Flat

Road. The subject property is vacant, is about 33 acres in size, and is owned by the Applicant. The subject property is not contiguous to any other properties under the same ownership and therefore, is not part of a tract.

The subject property was verified as a preliminary legal lot after a property line adjustment with file PA 07-05105. A copy of this file is included in the application file. The Applicant requests that this decision also serve as final notice of File No. PA 07-05105, pursuant to Lane Code 13.020.

2. The subject property has an elevation of approximately 1,000 feet above mean sea level (MSL) along the western property boundary, gradually slopes downward toward the east, and in the eastern and northern portions of the property, contains steep (greater than 40 percent grade) slopes oriented towards the east. At its lowest grade, the property has an elevation of approximately 740 feet above MSL in the northeastern site corner. It is designated Forest in the Lane County Rural Comprehensive Plan, and is zoned Impacted Forest Land (F-2, RCP), consistent with that plan designation. The majority of the subject property is forested, except for areas within the southern portion of the site dedicated to an existing driveway.

Properties abutting the northwestern, western, and southern property boundaries of the subject property are also zoned Impacted Forest Lands (F-2). Abutting properties to the northeast and east are zoned Rural Residential (RR-5). The surrounding area can generally be characterized as forested and/or developed with a rural level of residential dwellings and accessory structures. There are a number of dwellings in the vicinity of the subject property.

The forest dwelling is not located near existing roads but is proposed to be located near existing development on adjacent properties. A dwelling exists on Tax Lot 901 approximately 790 feet to the south and five dwellings are located approximately within 1,700 feet of the proposed location of the dwelling. The applicant indicates that the dwelling will be located within the second most level portion of the site. The home site is in the central western portion of the site, setback 201 feet from the nearest property line to the east and several hundred feet from the nearest road, Cedar Flats Road. This location contains slopes of approximately five to ten percent. The south-central portion of the site contains slopes that are in the range of approximately five percent. By comparison, steeper slopes over 25 and 40 percent are located in the northern and eastern portions of the site. The Applicant's site plan depicts the location of slopes greater than 25 percent and shows that the proposed dwelling will be setback approximately 175 feet from these steeper slopes. The depiction of steep slopes within the site appears to be consistent with Lane County GIS contour data and LiDAR data. The proposed dwelling is setback at least 30 feet away from any ravine, ridge or slope greater than 40 percent.

3. Approximately 62 percent of the subject property contains Soil Unit 104G, Peavine silty clay loam, 30 to 60 percent slopes, which is estimated to produce approximately 184 cubic feet per acre per year of wood fiber per NRCS data. Therefore, the 11-parcel template test required by Lane Code 16.211(5)(c)(i) is applicable to this application. In addition, Lane Code 16.211(5)(c)(i)(bb) requires that at least three dwellings existed on January 1, 1993, and continue to exist on lots located within a 160 acre square centered on the subject property. The following table documents the 11 parcels relied upon by the Applicant to satisfy Lane Code 16.211(5)(c)(i):

Count	Assessor's Map	Tax Lot	Date of Creation	Documentation / Deed / LLV / Partition
1	17-01-32-30	700	1965	Lot 1 of M65-92
2	17-01-32-30	803	1978	Parcel 2 of M66-77
3	17-01-32-30	804	1977	Parcel 1 of M28-77
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9	17-01-32-30	1300	1946	Record Vol. 300, Page 39
10	17-01-32-30	1700	1955	39547 / R1107/60080
11	18-01	1400	1941	

4. Lane Code 16.211(5)(c)(i)(bb) requires that at least three dwellings existed on January 1, 1993, and continue to exist on lots located within a 160 acre square centered on the subject property. The applicant has relied upon tax lot 700, developed with a dwelling in 1946; tax 110, developed with a dwelling in 1950; and tax lot 1101, developed with a dwelling in 1972, to satisfy this standard. These dwellings continue to exist.
5. The subject property is located within the McKenzie Fire & Rescue District. The record contains information regarding the locations of nearby fire stations, the firefighting equipment at nearby fire stations, and the adequacy of available firefighting equipment. The majority of areas along the proposed driveway contain relatively gradual slopes not exceeding 16 percent grade. The Applicant indicates that short segments of the driveway less than 100 feet in length may be more than 16 percent, but less than 20 percent, in slope.
6. The subject property has frontage on Cedar Flat Road, a rural Lane County maintained road and is functionally classified as a Rural Local Road. Access to



the proposed building site on the subject property will be via an existing driveway which crosses tax lot 901, assessor's map 17-01-32-30.

### **Decision**

THE PLANNING DIRECTOR DECISION APPROVING THE REQUEST (PA 17-05111) BY HARWOOD FARMS FOR A TEMPLATE FOREST DWELLING ON TAX LOT 900, ASSESSOR'S MAP 17-01-32-30 IS AFFIRMED.

### **Justification for the Decision (Conclusion)**

The subject property is zoned F-2 Impacted Forest Land. The Applicant is requesting approval to construct a single-family dwelling as provided by Lane Code 16.211(5)(c). Dwellings authorized by this provision are known as "forest template" dwellings because some of the applicable approval criteria of Lane Code 16.211(5) must be analyzed through the placement of a 160-acre square template centered on the center of the subject property (tract). Additionally, the placement of a dwelling on non-impacted forest land must meet the siting standards provided by Lane Code 16.211(8).

Under the template dwelling regulations, the standards differ depending upon the soil productivity of the property upon which the dwelling is to be placed. In the present case, a majority of the soils on the subject property are capable of producing between 85 cubic feet per acre per year of wood fiber. Therefore, Lane Code 16.211(5)(c)(iii) is applicable. Under Subsection (bb) of this standard, the applicant must demonstrate that there were three dwellings that existed on January 1, 1993 and continue to exist that are located within the 160-acre square template that is centered on the subject property.

The allegations of error raised by the Appellant in its appeal are as follows:

1. *The subject property was not lawfully created because its boundaries were changed via a property line adjustments in 2007 instead of through a replat procedure.*

Lane Code 16.211(5)(b) requires that the lot upon which a template dwelling is located be lawfully created. The Appellant points out that the County approved a minor subdivision M68-16 in 1968 that resulted in the subject property (tax lot 900) and tax lot 901. The subject property was reconfigured through a property line adjustment in 2007 and then conveyed to the Applicant in 2017. The Appellant first argues that tax lots 900 and 901 had been platted and that subsequent reconfigurations of those parcels required a replatting procedure instead of a property line adjustment.

The subject property was formed through what was termed a "minor subdivision" process in 1968. At that time, state law did not provide for partitions, only subdivisions that "...divided a parcel of land into four or more parcels of less than five acres each." (ORS 92.010(2)). However, ORS 92.046 allowed local

governments to develop their own partitioning process. Lane County did this with the adoption of its Revised Subdivision Ordinance in April of 1962. This ordinance required major subdivisions to have a “final plat” and a minor subdivision (partition) to have a “finished plat.” The “finished plat” had to be approved by the Planning Commission but “no further approval or recording” was required after that point. The record does not show that minor subdivision M68-16 was ever recorded. On the other hand, after Planning Commission approval, a final plat had to be delivered to the County Surveyor, be signed by the County Assessor, be signed by a majority of the Board of County Commissioners, be delivered to the office of the County Clerk, and be recorded.

Oregon Laws 1985, Chapter 369 amended ORS 92.190(3) to provide for the replatting of platted lots and parcels. Section 5 of that act defined “replat” to apply to “recorded” (*emphasis mine*) plats. Section 3(1) of that act also made it clear that a replat only applied to recorded plats. Therefore, the reconfiguration of the boundaries of the subject property in 2007 did not have to be through the replatting process because M68-16 was never recorded.

Staff relies upon ORS 92.190<sup>1</sup> for the proposition that property lines may be adjusted by procedures other than that through a replatting. This point is not germane as Lane County did not adopt its property line adjustment regulations until January 8, 2010.<sup>2</sup> However, the absence of pertinent County regulations is not fatal to the legitimacy of a property line adjustment. Arguably, a property line adjustment need only conform to the standards of ORS 92.190(4) to be valid. Thus, in the case of *Tarjoto v. Lane County*, 36 Or LUBA 645 (1999), LUBA accepted the County’s argument that a certain transaction constituted a property line adjustment rather than a partition as the only applicable requirements were those provided in ORS Chapter 92 as it existed at the time of the transaction (1976). At that time, the definition of partition in ORS 92.010 excluded an 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.

In conclusion, the adjustment of the boundaries of the subject property in 2007 did not require a replatting procedure nor did the validity of a property line adjustment, as long as it was recorded, require approval from Lane County.

*This allegation of error is dismissed.*

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<sup>1</sup> Oregon Laws 1989, Ch. 772, Section 24(3).

<sup>2</sup> Lane County Ordinance No. 2-09, effective April 2, 1962 to March, 1975.

2. *The subject property was not lawfully created because its boundaries were changed via illegal property line adjustments in 2007.*

The Appellant also argues that the property line adjustments violated the precepts of LUBA's decision in the *Bowerman* case<sup>3</sup>, most recently affirmed by the Oregon Court of Appeals.<sup>4</sup>

In 2007, the subject property was involved in two property line adjustments. At this time, Lane County did not have a property line adjustment procedure so a property owner merely had to record the adjustment and its legal description. The first adjustment had a Lane County Deeds and Records recording number of 2007-000689. Prior to the adjustment, tax lot 901 was located in the southwest corner of tax lot 900. (See Figure 1 of Attachment A.) The adjustment slid tax lot 901 to the east and slightly enlarged and reconfigured that tax lot. (See Figure 2 of Attachment A.) Essentially, this property line adjustment deed reconfigured the common boundary between tax lot 901 and tax lot 900 to the north and east; tax lot 100 to the west and south; and Cedar Flats Road, a Local Rural County Road, to the south. The second adjustment, the deed for which had a recording number of 2007-000690, moved the western boundary of previously adjusted tax lot 901 slightly to the west. (See Figure 3 of Attachment A.) This adjustment reconfigured the common boundary between tax lot 901 and tax lot 900 and Cedar Flats Road. Both recorded documents were given the same date/time stamp of "01/04/07 11:39:52 AM."

In the *Bowerman* case, LUBA reiterated its holding in *Warf v. Coos County*, 43 LUBA 460 (2003), which essentially was that a property line adjustment must adjust common property lines between existing properties. That is, property line adjustments can't be approved for proposed or hypothetical lots or parcels that do not yet exist as lots or parcels. The Oregon Court of Appeals declined to weigh in on this holding.

The Appellant's point, I believe, is that because the two property line adjustment documents were given the same recording date/time, they violate the *Bowerman* case because the second adjustment reconfigured a prior adjustment that had not yet been recorded. However, in the first 2007 property line adjustment, the common property line that was adjusted was the boundary of tax lot 901 as it interfaced with surrounding properties. This property line adjustment, recorded as document 2007-0680, referenced the original recorded documents, found in Reel 622, Reception No. 3624 and Reel 55, Reception No. 60669, Lane County Deeds and Records. The second property line adjustment (2007-0690) that reconfigured the common property line between 901 and tax lot 900 and Cedar Flat Road, referenced document 2007-0689 as the original document it was reconfiguring.

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<sup>3</sup> *Bowerman v. Lane County*, LUBA No. 20016-008 (January 26, 2017)

<sup>4</sup> *Bowerman v. Lane County*, 287 Or App 383 (2017)

As it has been observed in earlier Hearings Official decisions, the Lane County Deeds and Records Clerk apparently stamps documents with the same date/time stamp if they are presented to the Clerk at the same time for approval. While the two property line adjustment documents were given the same date/time stamp, it is a physical impossibility that they were recorded at the exact same time. This is because they have different recording numbers and the Clerk cannot stamp two numbers at the same time. Obviously, they were stamped seconds apart but that is sufficient to meet the *Bowerman/Warf* test. The first property line adjustment was given the number of 2007-000689 and it represented the first adjustment of the two tax lots. The second adjustment, which built upon the first, was given the next consecutive number. Copies of the deeds are included in Legal Lot Verification No. PA 07-05105 which is a part of this record.

*This allegation of error is dismissed.*

3. ***The 2007 property line adjustments violated the 80-acre minimum parcel size.***

Tax lot 900 was Parcel 2 of Minor Partition M 68-16 and tax lot 901 was Parcel 1 of that partition. Prior to the first property line adjustment in 2007, tax lot 900 was 35.2 acres in size and tax lot 901 was 2.2 acres in size. After the first adjustment, tax lot 901 was 2.42 acres in size and tax lot 900 was 34.7 acres in size. The second adjustment reduced tax lot 900 by .22 acres and increased tax lot 901 by the same amount. Both tax lots were below the minimum 80-acre lot size required by Lane Code 16.211(10)(a)<sup>5</sup>. The properties were not subject to any exception to this minimum acre size and thus were both substandard in size before and after the two property line adjustments. Neither of the affected properties were enlarged to the point where they qualified for a dwelling and thus would have violated of ORS 92.192(4).

In the case of *Phillips v. Polk County*<sup>6</sup>, the Oregon Court of Appeals affirmed LUBA's determination that ORS 215.780(1)(a) does not authorize a land use decision that results in the creation of a new parcel of less than 80 acres in an EFU zone through a lot line adjustment even if it was originally less than 80 acres. The same holding applies to parcels located in forest lands per ORS 215.780(1)(c).

The issue of lot line adjustments to substandard resource-zoned parcels was addressed by the Oregon Legislature in Chapter 12, Section 2 of Oregon Laws 2008 with an amendment to ORS Chapter 92. In 2015, these changes became part of ORS 92.192(3) and (4). ORS 92.192(3) allows the reconfiguration of abutting properties that are below the minimum lot size before and after the reconfiguration. Generally, remedial and procedural changes to legislation are considered to be retroactive but substantive changes are not unless there is

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<sup>5</sup> Consistent with ORS 215.780(2)(c).

<sup>6</sup> 53 Or LUBA 194, *aff'd*, 213 Or App 498, 162 P3d 338 (2007), *rev den*, 344 Or 43 (2008).

supporting legislative intent.<sup>7</sup> In the present case, the Legislature made it clear that these changes were intended to be retroactive.

Section 6 of Chapter 12 of Oregon Laws 2008 states:

*“Section 2 of this 2008 Act and the amendments to ORS 92.010 and 92.060 by sections 3 and 4 of this 2008 Act apply to property line adjustments approved before, on or after the effective date of this 2008 Act.”*

The 2007 property line adjustments must be considered valid based upon the retroactive application of ORS 92.192(3).

### Summary

The Appellant has argued that the reconfiguration of the subject property’s boundaries in 2007 should have been through a replat procedure and, alternatively, the property line adjustments violated the standards of the *Bowerman* and *Warf* cases. The Appellant has further argued that the 2007 property line adjustments were inconsistent with LUBA’s holding in the *Phillips* case. I do not believe that the facts in the record support the first two allegations of error and the land use violation addressed by the third allegation of error was cured by the passage of Chapter 12 of Oregon Laws 2008. Therefore, the Planning Director’s approval of the Applicant’s request for a template dwelling on the subject property is affirmed.

**Respectfully Submitted,**



**Gary Darnielle**  
**Lane County Hearings Official**

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<sup>7</sup> *Joseph v. Lowery*, 261 Or 545, 495 P2d 273 (1972).

# ATTACHMENT A

Figure 1

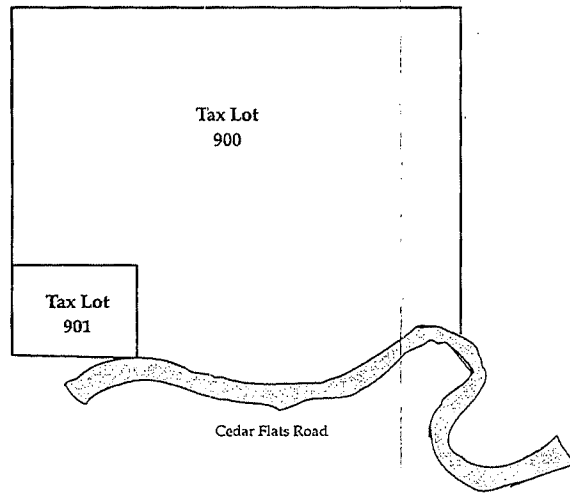


Figure 2

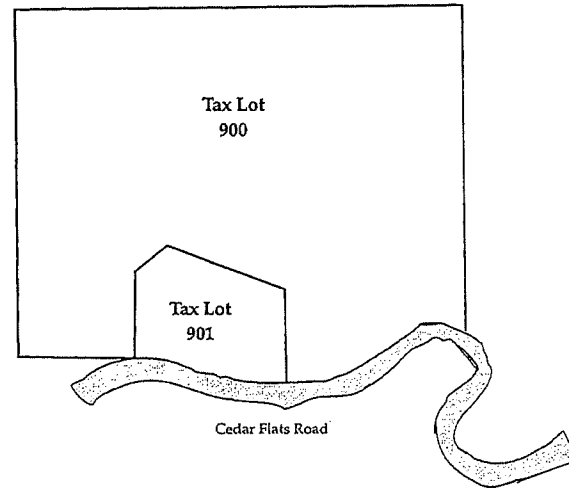
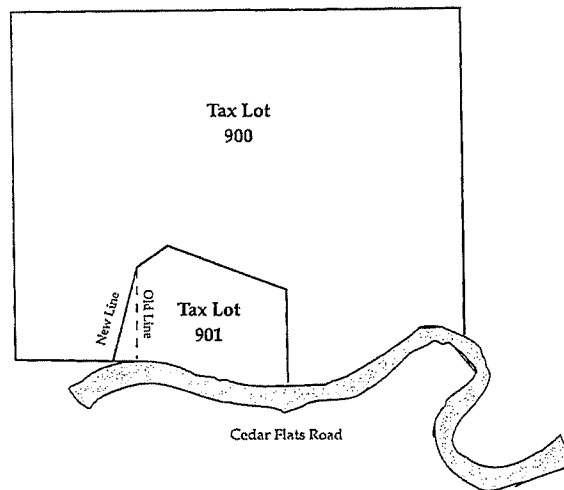


Figure 3





11 229  
October 10, 2017

Ms. Lydia McKinney, Manager  
Land Management Division  
3050 N. Delta Highway  
Eugene, OR 97408

Re: *Appeal of Planning Director approval of the request (PA 17-05111) by Harwood Farms for a forest template dwelling on Tax Lot 900, Assessor's Map 17-01-32-30.*

Dear Ms. McKinney:

On September 29, 2017, I issued a decision affirming the Planning Director's approval of the request (PA 17-05111) by Harwood Farms for a forest template dwelling on Tax Lot 900, Assessor's Map 17-01-32-30. On October 10, 2017 this decision was appealed by LandWatch Lane County. Upon a review of this appeal, I find that the allegations of error have been adequately addressed in that decision and that a reconsideration is not warranted.

Accordingly, on the authority of Lane Code 14.535(1), I shall affirm my September 29, 2017 reconsidered decision without further consideration. Please advise interested parties of this decision.

Sincerely,

Gary L. Darnielle  
Lane County Hearings Official

cc: Amber Bell (file)

**EXHIBIT B**