

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 16-12-06-07 IN THE MATTER OF ELECTING WHETHER OR NOT TO HEAR AN APPEAL OF A HEARINGS OFFICIAL DECISION APPROVING A LEGAL LOT VERIFICATION AND NOTICE FOR FOUR PARCELS WITHIN PROPERTIES IDENTIFIED AS ASSESSOR'S MAP AND TAX LOTS 16-04-10-00-00800 and 02201; (File No. 509-PA16-05590/Farver).

WHEREAS, the Lane County Hearings Official has made a determination approving a Legal Lot Verification and Notice for four parcels within properties identified as Assessor's Map and Tax Lots 16-04-10-00-00800 and 02201, pursuant to Lane Code 13.450, 13.010, and 13.020, in Department File No. 509-PA16-05590; and

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

WHEREAS, the Lane County Hearings Official has affirmed his decision on the application after reviewing the appeal in File No. 509-PA16-05590; and

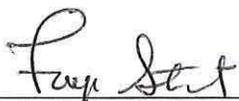
WHEREAS, Lane Code 14.600 provides the procedure and criteria that the Board follows in deciding whether or not to conduct an on the record hearing for an appeal of a decision by the Hearings Official; and

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

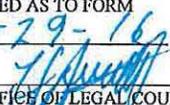
NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. That 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. That the Lane County Hearings Official decision dated October 24, 2016, and the letter affirming the decision dated November 9, 2016, attached as Exhibit "B," which found relevant approval criteria are met, are affirmed and adopted by the Board of County Commissioners as the County's final decision. The Board of County Commissioners has reviewed the appeal and the Hearings Official decision and expressly agrees with and adopts the interpretations of Lane Code 13.450, 13.010, and 13.020 made by the Hearings Official in the decision.

ADOPTED this 6th day of December, 2016.



Faye Stewart, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM
Date 11-29-16


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," can be identified as tax lots 800 and 2201, assessor's map 16-04-10. The subject property is owned by the Charles Faver and is zoned E-30 Exclusive Farm Use. The subject property was first zoned AGT on March 25, 1966 and was rezoned to its current zoning on February 29, 1984. It was not subject to partition requirements until 1975 although no division of the parcels occurred after 1897.
2. Legal Lot 3 was created on December 16, 1872 with a bargain and sales deed from the State of Oregon to T.J. Moffitt. A copy of the deed can be found in Book 1, Page 259 Lane County Deeds & Records. Legal Lot 3 is the portion of tax lot 800 that lies north of Hayes Road.
3. Legal Lot 2 was created on June 29, 1874 in a transfer from the State of Oregon to James Mills. It lay within Government Lot 4, Section 10 of Township 16 South Range 4 West. A copy of the deed can be found in Book 1, Page 259, Lane County Deeds & Records. Legal Lot 2 is a portion of tax lot 800 that lies south of Hayes Road.
4. On November 7, 1889, Hayes Road was dedicated to Lane County in fee. It became County Road #460. Hayes Road had the effect of splitting off the southern portion of the property created in December of 1872, which became a part of Legal Lot 1.
5. Legal Lot 1 is the area south of Hayes Road and is comprised of the part of tax lot 800 within Government Lot 5 in Section 10 of Township 16 South Range 4 West and all of tax lot 2201 that lies south of the road. It was conveyed on December 13, 1872 from the State of Oregon to T.J. Moffitt and is described in Book 1, page 259 of Lane County Deeds & Records.
6. On October 7, 1897, a portion of the property created in June of 1874 was deeded from Wetzler to Burgess. A copy of the deed can be found in Book 48, Page 624, Lane County Deeds & Records. This property now can be identified as tax lot 1900 and is not a part of this legal lot verification determination.
7. On September 3, 1985, the State of Oregon transferred tax lot 2201 to Elvin and Eva Zumwalt via quitclaim deed and became part of Legal Lot 3. This property is essentially an old meander channel of the Willamette River. This was a de facto property line adjustment that was not prohibited at the time as it was the policy of the State to donate meander channels to adjacent property owners. A copy of the deed can be found in Reel 1365, Instrument 8531226, Lane County Deeds & Records. The portion of this property lying north of Hayes Road is a part of Legal Lot 3.
8. Legal Lot 4 is the remainder of the property transferred to James Mills by the State of Oregon in 1874 after the creation of tax lot 1900 in 1897. It was conveyed by warranty deed on June 29, 1874 by the State of Oregon to James Mills and its deed can be found in Book 47, Page 434, Lane County Deeds & Records. This deed was not recorded until August 14, 1899.
9. ORS 274.025(1) provides that the State has title to submersible and submerged lands of all navigable streams and lakes in Oregon now existing or which may have been in existence in 1859. ORS 274.036 provides that the state has ownership in the bed of the Willamette River. ORS 274.402(1) gives the State Land Board, the administrative head of the Department of State Lands, the exclusive jurisdiction to assert title to submerged or submersible lands in navigable waterways on behalf of the State of Oregon.
10. On July 18, 2016, a request for a Director review of a Legal Lot Verification and Notice was submitted to the Land Management Division. The application was reviewed and accepted as

complete on August 12, 2016. On September 7, 2016, the application was approved, finding that four legal lots exist within the subject property. Notice of the determination was mailed to surrounding property owners. On September 21, 2016, a timely appeal was submitted by LandWatch Lane County and Robert Emmons.

11. On October 20, 2016, the Lane County Hearings Official conducted a public hearing. On October 24, 2016, 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 October 24, 2016.
12. On November 7, 2016, 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).
13. On November 9, 2016, the Hearings Official reviewed the appeal and affirmed his decision without further consideration pursuant to LC 14.535(1).
14. 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.*
15. The Board finds that the issues raised in this appeal are not of countywide significance. The Land Management Division has consistently found that conveyances between adjacent ownerships, which do not have the effect of creating new parcels, constitute de facto property line adjustments when they occur prior to the time when there were any state or local regulations that required a more formal procedure than a deed transaction and recordation. The Hearings Official's decision dated October 24, 2016, supports this practice. Furthermore, the Hearings Official found that allegations of error raised in the appeal have been adequately addressed in the decision October 24, 2016, and that reconsideration is not warranted. The Hearings Official's decision presents a reasonable interpretation of Lane Code 13.450, 13.010, 13.020, and the effect of the 1985 conveyance from the Department of State Lands to adjacent ownerships that is consistent with the Land Management Division's past practice.
16. The Board finds that the issues involved in this appeal will not reoccur with frequency and that there is not a need for further policy guidance. Legal lot verifications applications are a common land use application made to the Land Management Division. Irrespective of the frequency of this type of application, when similar issues have been presented, the Land Management Division has consistently found that conveyances between adjacent ownerships, which do not have the effect of creating new parcels, constitute de facto property line adjustments when they occur prior to the time when there were any state or local regulations that required a more formal procedure than a deed transaction and recordation. The Hearings Official's decision supports this practice. 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 Lane Code 13.450, 13.010, 13.020, and the effect of the 1985 conveyance from the Department of State Lands to adjacent ownerships. If these issues arise in the future, the Hearings Official's decision provides sufficient guidance.
17. The Board finds that the subject property does not constitute a unique environmental resource. To the extent that the designated class I stream on the east portion of the property could be considered a unique environmental resource, the riparian regulations at Lane Code 16.253 govern development in the vicinity of class I streams.

18. The Planning Director does not recommend review of the appeal on the record for the reasons cited above.
19. 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.
20. The Board has reviewed this matter at its meeting on December 6, 2016, 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.
21. The Board affirms and adopts the Lane County Hearings Official decision dated October 24, 2016, the letter affirming the decision dated November 9, 2016, as the County's final decision in this matter, and expressly agrees with and adopts the interpretations of Lane Code 13.450, 13.010, 13.020, and the effect of the 1985 conveyance from the Department of State Lands to adjacent ownerships made by the Hearings Official in the decision.



November 9, 2016

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

Re: Appeal of Hearings Official decision affirming the Planning Director's approval of the Farver request (PA 16-05590) for the legal lot verification and notice of tax lots 800 and 2201, assessor's map 16-04-10.

Dear Ms. McKinney:

On October 24, 2016, I affirmed the Planning Director's approval of the Farver request (PA 16-05590) for the legal lot verification and notice of tax lots 800 and 2201, assessor's map 16-04-10. On November 7, 2016 LandWatch Lane County appealed my decision. 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 October 24, 2016 decision without further consideration. Please advise interested parties of this decision.

Sincerely,



Gary L. Darnielle
Lane County Hearings Official

cc: Rafael Sebba (file)

**LANE COUNTY HEARINGS OFFICIAL
APPEAL OF AN ADMINISTRATIVE APPROVAL OF LEGAL LOT
VERIFICATION AND NOTICE**

Application Summary

On July 18, 2016, the Lane County Land Management Division received a request for a final legal lot verification and notice (PA 16-05590) for four parcels identified as tax lots 800 and 2201, assessor's map 16-04-10. The request was accepted as complete by the Planning Director on August 12, 2016 and on September 7, 2016 the application was approved. A timely appeal was filed by LandWatch Lane County on September 21, 2016.

Parties of Record

Charles Farver
Robert Emmons

Thom Lanfear

Sean Malone

Application History

Hearing Date: October 20, 2016

Decision Date: October 24, 2016

Appeal Deadline

An appeal must be filed within 12 days of the issuance this decision and final order, 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 13.450
Lane Code 13.010 and 13.020

Findings of Fact

1. The property subject to this application, hereinafter referred to as the “subject property,” can be identified as tax lots 800 and 2201, assessor’s map 16-04-10. The subject property is owned by the Charles Faver and is zoned E-30 Exclusive Farm Use. The subject property was first zoned AGT on March 25, 1966 and was rezoned to its current zoning on February 29, 1984. It was not subject to partition requirements until 1975 although no division of the parcels occurred after 1897.

2. Legal Lot 3 was created on December 16, 1872 with a bargain and sales deed from the State of Oregon to T.J. Moffitt. A copy of the deed can be found in Book

1, Page 259 Lane County Deeds & Records. Legal Lot 3 is the portion of tax lot 800 that lies north of Hayes Road.

Legal Lot 2 was created on June 29, 1874 in a transfer from the State of Oregon to James Mills. It lay within Government Lot 4, Section 10 of Township 16 South Range 4 West. A copy of the deed can be found in Book 1, Page 259, Lane County Deeds & Records. Legal Lot 2 is a portion of tax lot 800 that lies south of Hayes Road.

On November 7, 1889, Hayes Road was dedicated to Lane County in fee. It became County Road #460. Hayes Road had the effect of splitting off the southern portion of the property created in December of 1872, which became a part of Legal Lot 1.

Legal Lot 1 is the area south of Hayes Road and is comprised of the part of tax lot 800 within Government Lot 5 in Section 10 of Township 16 South Range 4 West and all of tax lot 2201 that lies south of the road. It was conveyed on December 13, 1872 from the State of Oregon to T.J. Moffitt and is described in Book 1, page 259 of Lane County Deeds & Records.

On October 7, 1897, a portion of the property created in June of 1874 was deeded from Wetzler to Burgess. A copy of the deed can be found in Book 48, Page 624, Lane County Deeds & Records. This property now can be identified as tax lot 1900 and is not a part of this legal lot verification determination.

On September 3, 1985, the State of Oregon transferred tax lot 2201 to Elvin and Eva Zumwalt via quitclaim deed and became part of Legal Lot 3. This property is essentially an old meander channel of the Willamette River. This was a de facto property line adjustment that was not prohibited at the time as it was the policy of the State to donate meander channels to adjacent property owners. A copy of the deed can be found in Reel 1365, Instrument 8531226, Lane County Deeds & Records. The portion of this property lying north of Hayes Road is a part of Legal Lot 3.

Legal Lot 4 is the remainder of the property transferred to James Mills by the State of Oregon in 1874 after the creation of tax lot 1900 in 1897. It was conveyed by warranty deed on June 29, 1874 by the State of Oregon to James Mills and its deed can be found in Book 47, Page 434, Lane County Deeds & Records. This deed was not recorded until August 14, 1899.

A graphic depiction of the four legal lots and their deed history is contained in Attachment A to this decision.

3. ORS 274.025(1) provides that the State has title to submersible and submerged lands of all navigable streams and lakes in Oregon now existing or which may

have been in existence in 1859. ORS 274.036 provides that the state has ownership in the bed of the Willamette River.

ORS 274.402(1) gives the State Land Board, the administrative head of the Department of State Lands, the exclusive jurisdiction to assert title to submerged or submersible lands in navigable waterways on behalf of the State of Oregon.

Decision

THE PLANNING DIRECTOR'S APPROVAL OF THE CHARLES FARVER REQUEST (PA 16-05590) FOR THE LEGAL LOT VERIFICATION AND NOTICE OF FOUR LEGAL LOTS WITHIN TAX LOTS 900 AND 2201, ASSESSOR'S MAP 16-04-10 IS AFFIRMED.

Justification for the Decision

The following are the Appellant's allegation of error:

1. ***Tax lot 2201 was created for tax lot purposes and is not a legal lot.***

The Applicant has not claimed tax lot 2201 is a legal lot and the legal lot status of this tax lot is not relevant to the legal status of the four legal lots subject to this application for legal lot verification. More to the point, tax lot 2201 was in existence when it was transferred by quitclaim deed and subsequently assigned a tax number. Tax lot 2201 was a meander channel of the Willamette River that was subject to dereliction (loss of water). Because the Willamette River is a navigable river its streambed, including its meander channels, are and have been in State ownership since 1859.

This allegation of error is dismissed.

2. ***Tax lot 2201 was created by deed when land use laws were in place; and***

3. ***Tax lot 2201 represents an illegal partition.***

As explained above, Tax lot 2201 was in state ownership as a meander channel of the Willamette River when it was transferred to adjacent ownerships by quitclaim deed in 1985. Apparently it was the policy of the Department of State Lands to dispose of reliction¹ as surplus property and transfer its ownership to adjacent landowners. The portion of the channel located north of Hayes Road merged with Legal Lot 3 as it was transferred to the owner of that parcel and the portion of the channel located south of Hayes road merged with Legal Lot 1 as it was transferred to the owner of that parcel.

¹ Dry land formed by the withdrawal of water from a river, lake or sea

I don't believe that the transfer of land can be viewed as a partitioning, since no new parcel was created. It was more like a de facto property line adjustment that eliminated common boundaries. This action did not create substandard parcels because the elimination of the property boundaries of tax lot 2201 only increased the size of adjacent EFU-zoned parcels. Neither state nor Lane County provisions that required a formal property line adjustment procedure were in place in 1985 and the only legal requirement was that the deed transferring the property be recorded to finalize the transfer of ownership.

These allegations of error are dismissed.

Conclusion

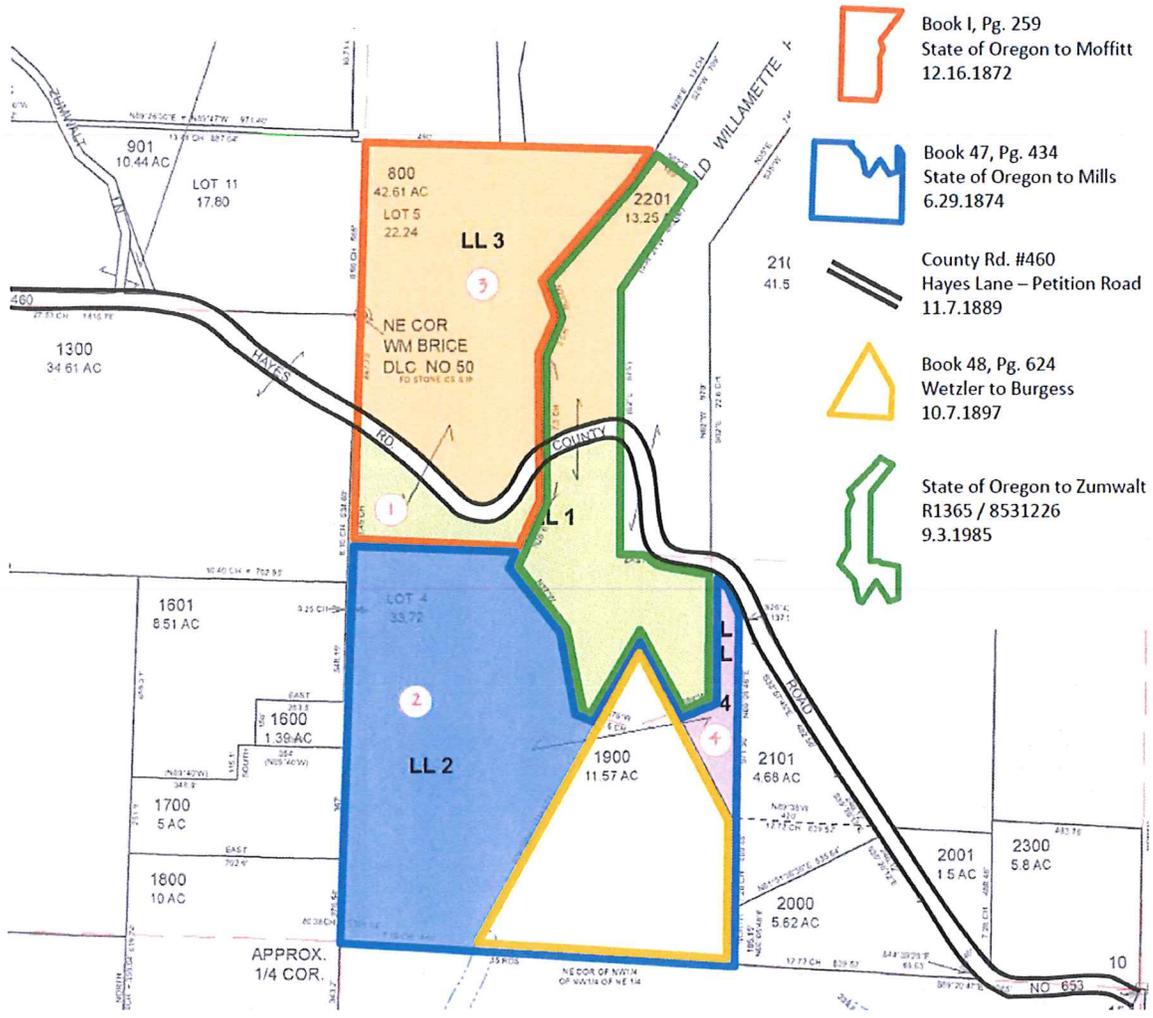
There is no dispute that the four legal lots in contention were formed through deed transfers that occurred prior to 1900. The only issue concerns the donation of State-owned property in 1985 that enlarged two of these legal lots. If the donation did not occur, there still would be four legal lots except that two of them would be smaller.

The transfers of the meander property in 1985 did not create new property but rather reduced an existing parcel owned by the State to nothing. It is a common understanding that a property line adjustment may move common property lines or eliminate them altogether. The State's transfer of the meander property to adjacent property owners represented a de facto property line adjustment prior to the time that there were any state or local regulations that required a more formal procedure than a deed transaction and recordation. For this reason the Planning Director's verification of the legal lot status of the four lots identified by the Applicant must be affirmed.

Respectfully Submitted,


Gary Darnielle
Lane County Hearings Official

ATTACHMENT A (PA 16-05590)



 Book I, Pg. 259
State of Oregon to Moffitt
12.16.1872

 Book 47, Pg. 434
State of Oregon to Mills
6.29.1874

 County Rd. #460
Hayes Lane - Petition Road
11.7.1889

 Book 48, Pg. 624
Wetzler to Burgess
10.7.1897

 State of Oregon to Zumwalt
R1365 / 8531226
9.3.1985