

W. 15. b.

January 5, 2004

SUPPLEMENTAL MATERIAL

To: The Board of Commissioners of Lane County, Oregon

In the matter of the **Resolution, Notice of Hearing and Order 3-11-5-6** to set a public hearing regarding the proposed vacation of a portion of W.W. Jackson Road

This purpose of this letter is to post an objection to the incompleteness of the Agenda cover memo, and Preliminary Director's report for Resolution, Notice of Hearing and Order 3-11-5-6 which subsequently was approved by the Board to set a public hearing on January 14th. On the petition to vacate the described section of W.W. Jackson Road.

In reading the written material provided with the Resolution one would think that the proposed road vacation is just a routine petition to vacate an old county road lying within the property of the petitioners. However, as will be explained, this is misleading the public. One only needs to review tax lot 200 on Attachment "A-1" and Attachment "G" to visually see that this proposed road vacation is not a simple routine road vacation. Rather, it is part of a land development scheme that uses legal lot verifications, property line adjustments and a road vacation that results in what afterwards may appear to be a subdivision or series land partition.

The purpose of the Resolution and Notice of Hearing and Order, Agenda cover memo and Preliminary Director's Report is to provide the Board and the public relevant and vital information specifically related to the proposal to set a public hearing to vacate the described road petitioned to be vacated.

The Board has a long standing expectation and policy that the Agenda format has within it sections and headings that are setup to provide the Board and the public a comprehensive report of the proposed action that the Board may consider.

The Board and the public rely on the written material provided by county staff in the Resolution documents to fully consider whether it is in the public interest to set a public hearing date to consider whether to vacate a public road. Or, perhaps the Board may elect to refuse to set a date for the public hearing. Or, the Board may elect to select other options that may include more information from the staff.

It is contended that all the relevant information regarding the proposed vacation of WW Jackson Road was not provided to the Board by public works staff that prepared and provided the Resolution documents. Consequentially, it is contended the Board did not have the opportunity to fully consider its options of whether to set a public hearing, delay the hearing or ask for additional information from staff. Likewise, for similar reasons, the public is denied the opportunity to fully evaluate whether they may want to participate in the proceedings and voice whether they are in favor or oppose the announced road vacation hearing.

Without going into great detail at this time, as the relevant information is very difficult to follow due to the many land records, legal lot approvals and property line adjustments the important issues of legal lots will be the focus of this letter.

Attachment C-1 is a systematic listing of relevant land use issue, dates and records regarding this petition to vacate this segment of county road described in the Resolution documents. In review of the chart one can observe that on January 22, 2001 Derek Jaros made an application for legal lot verification on his property along W.W. Jackson road. On September 5, 2001 a legal lot was conveyed on the south side of W.W. Jackson Road to Dianne F. Jaros and on September 7, 2001 a petition to vacate that same section of county road was provided to Lane County. This petition was amended and submitted April 25, 2002 that discloses the purpose of the road vacation was for property line adjustments after the road vacation was approved.

To write a comprehensive step by step report on these listing of items that pertain to the proposed vacation of a segment of W.W. Jackson Road would causes one to get lost in the detail and most likely lose the most important issues.

These issues are that it is contended by this writer and other records as will be disclosed later, that county planning staff in approving the application for legal lots by Derek Jaros or Audrey J. McAtee or Richard D. McAtee on each side of the section of county road proposed to be vacated are in violation of Oregon land use law. To develop these alleged "legal lots" into the most desirable parcels of land by subsequent property line adjustments by applicant Derek Jaros depend on the vacation of the section of county road petitioned to be vacated.

It is contended that the described legal lots and subsequent parcel that are proposed to be property line adjusted by use of the petition to vacate this section of county road is relevant and should have been disclosed in detail to the Board of Commissioners and to the public. The amended petition to vacate the noted section of county road states as one of the reasons to vacate the road is to proceed with property line adjustments as shown on survey 37162. This was not disclosed in the Resolution documents provided to the public. Please see attachment "E" and "G" that is an exhibit based on filed surveys 37161 and 37162.

Why would one contend that the approved application by county planning staff for legal lots on each side of W.W. Jackson Road are not in agreement with Oregon's land use laws? There are several reasons:

(1) The most obvious reason is the W.W. Jackson road when it was established as a county road in 1912 was and is an easement for a road. In 1912, the land on each side and beneath the county road continued to be owned by the land owner where the road crossed his land. The county road that was establishment in 1912 by an easement for a road did not divide the property, it continued to be a single unit of land. One cannot now change that fact and create legal lots on each side of the county road as the county road is an easement and is not a property line and consequently no legal lot can exist on each side of the road as it never was a legal lot! It fails the test of a legal lot by definition.

(2) County Planning staff, without doubt, are aware of the recent land use actions surrounding Fire Road that contains information where Lincoln County, just like Lane County, had a codified process to recognize legal lots. The problem comes when Lincoln County applied that process to allow a public road to divide property and to create legal lots on each side of the road!

One has only to read the contents of a Commission Enforcement Order letter dated February 9, 1999 from the Oregon Department of Land Conservation and Development to the Director of Lincoln County Planning Division. The letter provides that "Lincoln County routinely regards a parcel that is divided by a public road as two legal parcels and discrete parcels. ... The petitioner and the department asserted that this practice is unlawful since ORS 92.010(7) (d) clearly provides that "any property divided by sale or grant of property for state highway, county road, city street or other right of way purposes shall continue to be considered a single unit of land,," Please see Attachment "H" pages 1 -5 for the letter from DLCD.

(With this DLCD letter in the Lane County Planning file it is not understood why county planning staff continue to approve applications for legal lots on each side of county roads as has been done in this very instance along the section of W.W. Jackson Road petitioned to be vacated.)

(3) In the same Lane County Planning land use action file along Fire Road is a similar decision by Lane County Hearing Official like DLCD against Lincoln County. County Hearing Official Gary Darnielle provided a decision to Lane County Planning Department regarding the same issue of whether a county

road divides a property into two legal lots dated March 9, 2000. His decision, regarding the legal lot issue, is within a comprehensive 2 ½ page letter dated March 9 that clearly concludes that the county road does not divide property and does not create legal lots. Please see Attachment "I" pages 1-4.

Fox Hollow Road: Another item that is relevant, and not provided by county staff, in the Resolution documents, is that county Surveyors Office staff have been unable to locate sufficient records that establish Fox Hollow Road as a county road that runs somewhat parallel to W.W. Jackson road (county road 723) . It brings to question whether it is considered to be in the public interest whether the section of W.W. Jackson road should be vacated until necessary action is taken, such as legalization proceedings to legally establish Fox Hollow Road as a county road. Is it in the public interest to vacate a section of W.W. Jackson Road that is a legal county road until Fox Hollow is established as a legal county road?

For all of the reasons stated above it is believed that the Board's Resolution Documents packet fails to meet the intention of proper notice to the public as it is notable incomplete and consequently misleading. It is requested, then, that the Board not take actions to vacate the section of county road as described in Resolution and Order 03-11-5-6 until the Board and the public have been provided the usual and expected: Agenda Issue, Background Analysis, and the Board is provided Options relative to the complete information regarding the petition to vacate this described segment of W.W. Jackson county road.

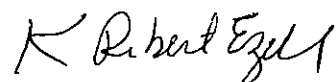
In light of the issues and information provided it is hoped that the Board would set up a work session with County Planning Staff and County Counsel to make a determination on whether county planning staff approving application for legal lots on each side of a public road are in compliance with Oregon laws as previously noted. Further, unrelated to the this particular road vacation but within the context of legal lots and subsequent property line adjustments within the Derek Jaros tract (tax lot 200) is how small an area is a legal lot? It is noted that staff approved an application for a legal lot (PA 00-5653) from Derek Jaros for a legal lot along Fox Hollow Road within the same property of Jaros that when the usual building setbacks are applied the area of the parcel or lot would not support a single car garage! It seems that an area of land that could barely fit a single car garage defies the legal lot criteria as intended by the Oregon Law regarding legal lots.

So it is asked, as well, that minimum size legal lot criteria also be included with the proposed work session.

And finally, let it be known by all who may read this paper, that land developer Derek Jaros or Dianne F. Jaros or any other petitioner, that these property owners, by the policies of county planning , have properly applied for all the necessary legal lot verifications and property line adjustments within their property along the noted county road. Nothing is intended to suggest otherwise. The issue, it seems, is whether county planning staff are properly applying Oregon land use laws relative to legal lots where public roads cross their property! These issues and differing opinions are directly related to the petition to vacate this section of county road and should have been disclosed to the Board and public.

The opinions by DLCD and the County Hearing Official that legal lots are not divided by public roads and legal lots are then not created seems worthy of the halt to such type of applications for legal lots until a full review is completed.

K. Robert Ezell, retired County Surveyor, Wingate St. Eugene Oregon.

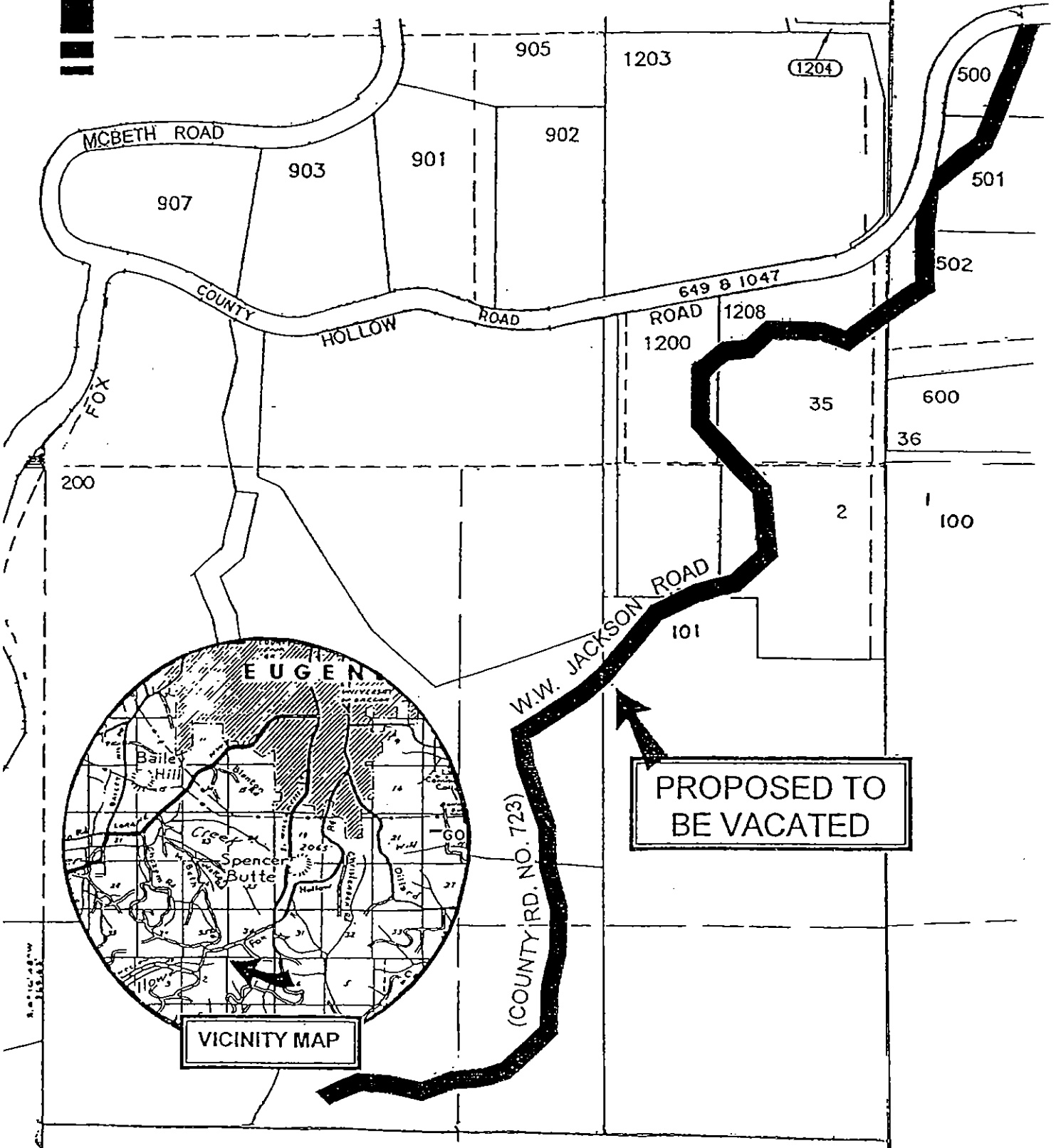


Attachments: A-1; C-1 ; E, G; H (1-5) and I (1-4)

ATTACHMENT "A"

Sec. 35 & 36 T. 18S. R. 4W. W.M.
and
Sec. 2 T. 19S. R. 4W. W.M.
LANE COUNTY

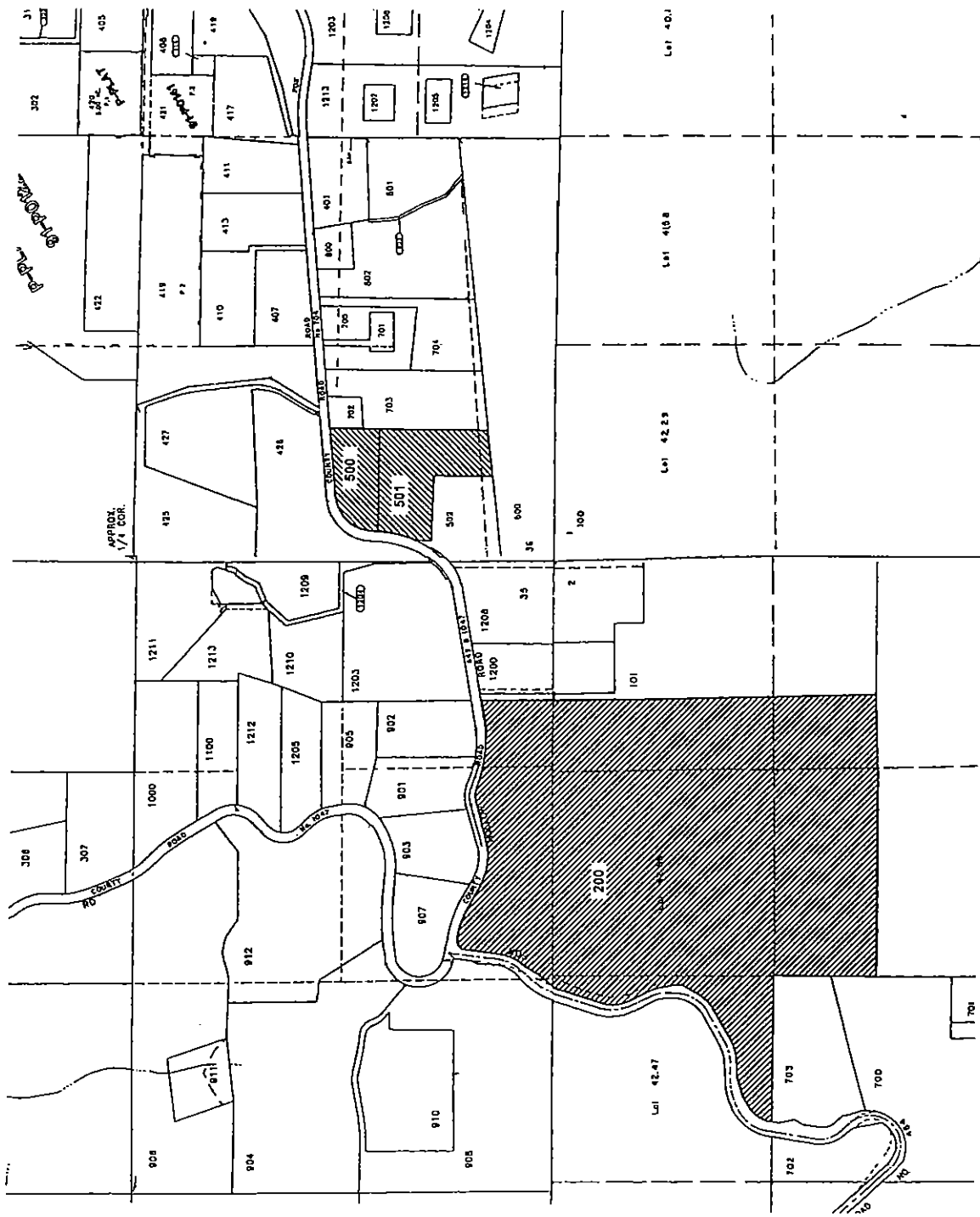
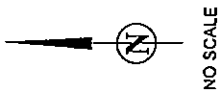
NO SCALE



PROPOSED TO
BE VACATED

VICINITY MAP

(COUNTY RD. NO. 723)

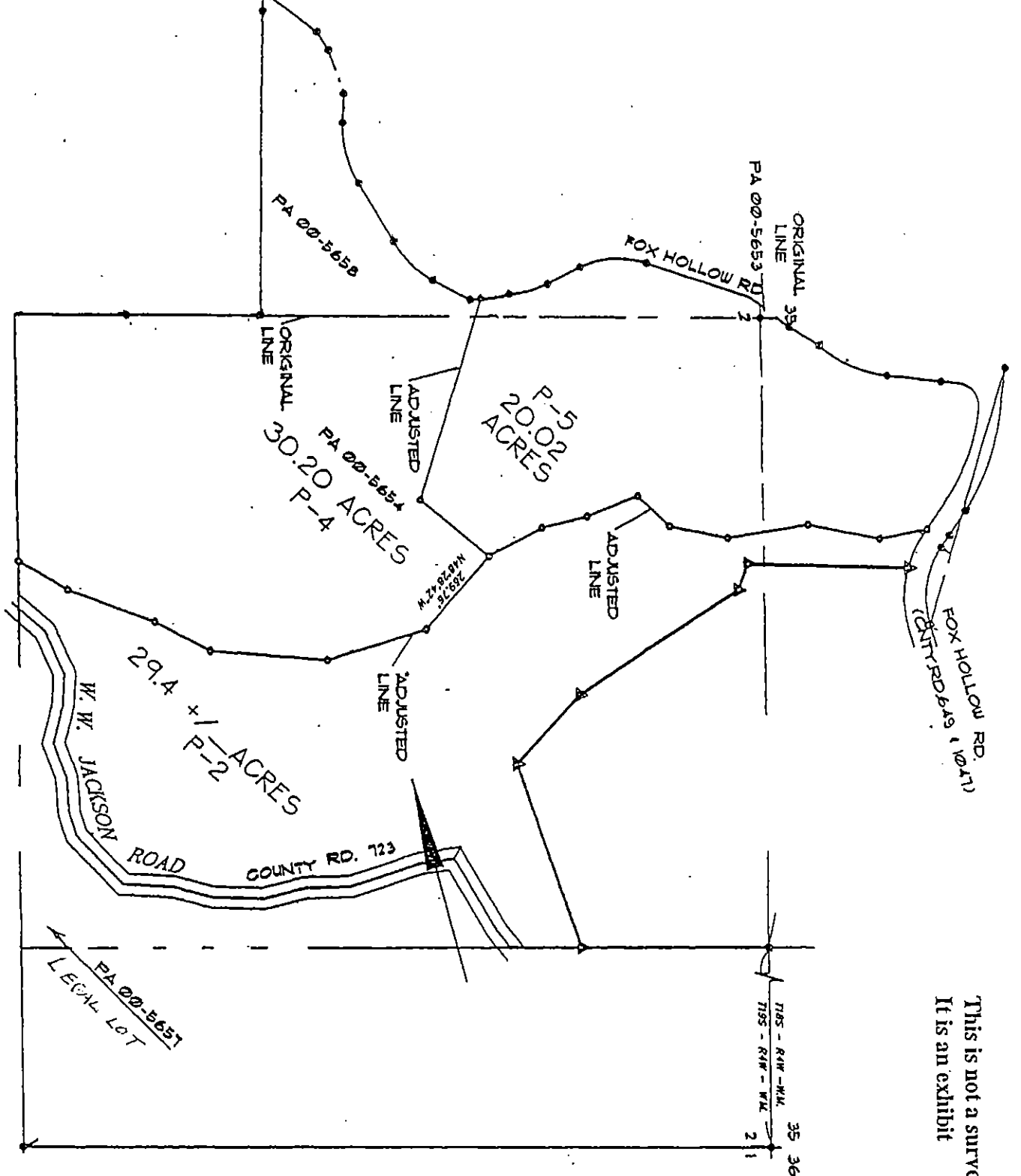


**ATTACHMENT C-1
W.W. JACKSON ROAD**

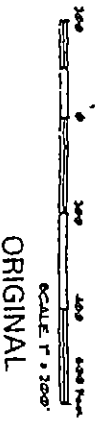
Sequence of Dates regarding the petition to vacate a section of W.W. Jackson Road, legal lots & property line adjustments:

Date & Item:

- | | |
|----------------|--|
| Feb. 9, 1999 | Oregon Department of Land Conservation and Development wrote to Lincoln County Planning Division. |
| March 9, 2000 | Letter by Lane County Hearings Official to Lane County Planning (Fire Road) |
| Jan 22, 2001 | Application for legal lot along W.W. Jackson Road by Derek Jaros (PA 00-5657) ✓ |
| Jan 22, 2001 | Application by Derek Jaros for legal lot along Fox Hollow Road (small parcel) (PA 00-5653) |
| May 30, 2001 | Application for legal lots along Fox Hollow Road (PA 01-5237) |
| Aug. 20, 2001 | Property line adjustment plan survey showing W.W. Jackson Road |
| Sept. 5, 2001 | Derek Jaros conveyed legal lot on south side of W.W. Jackson Road to Dianne Jaros. |
| Sept. 7, 2001 | Petition received to vacate W.W. Jackson Road |
| Dec. 3, 2001 | Derek Jaros conveyed 29.4 ac. property line adjusted legal lot north of W.W. Jackson to Ken Caiazza. |
| Feb. 28, 2002 | Special Use Permit applied for by Ken Caiazza for house site on 29.4 ac. |
| April 25, 2002 | Amended petition submitted to vacate section of W.W. Jackson Road |



This is not a survey
It is an exhibit



NE 1/4-88C3-7198-RAU-W/1
AND
SE 1/4-88C36-7186-RAU-W/1,
LANE COUNTY, OREGON

This exhibit shows legal lot verification from PA 00-5657. It allows property on the north side of W.W. Jackson Road to be the adjusted property line.

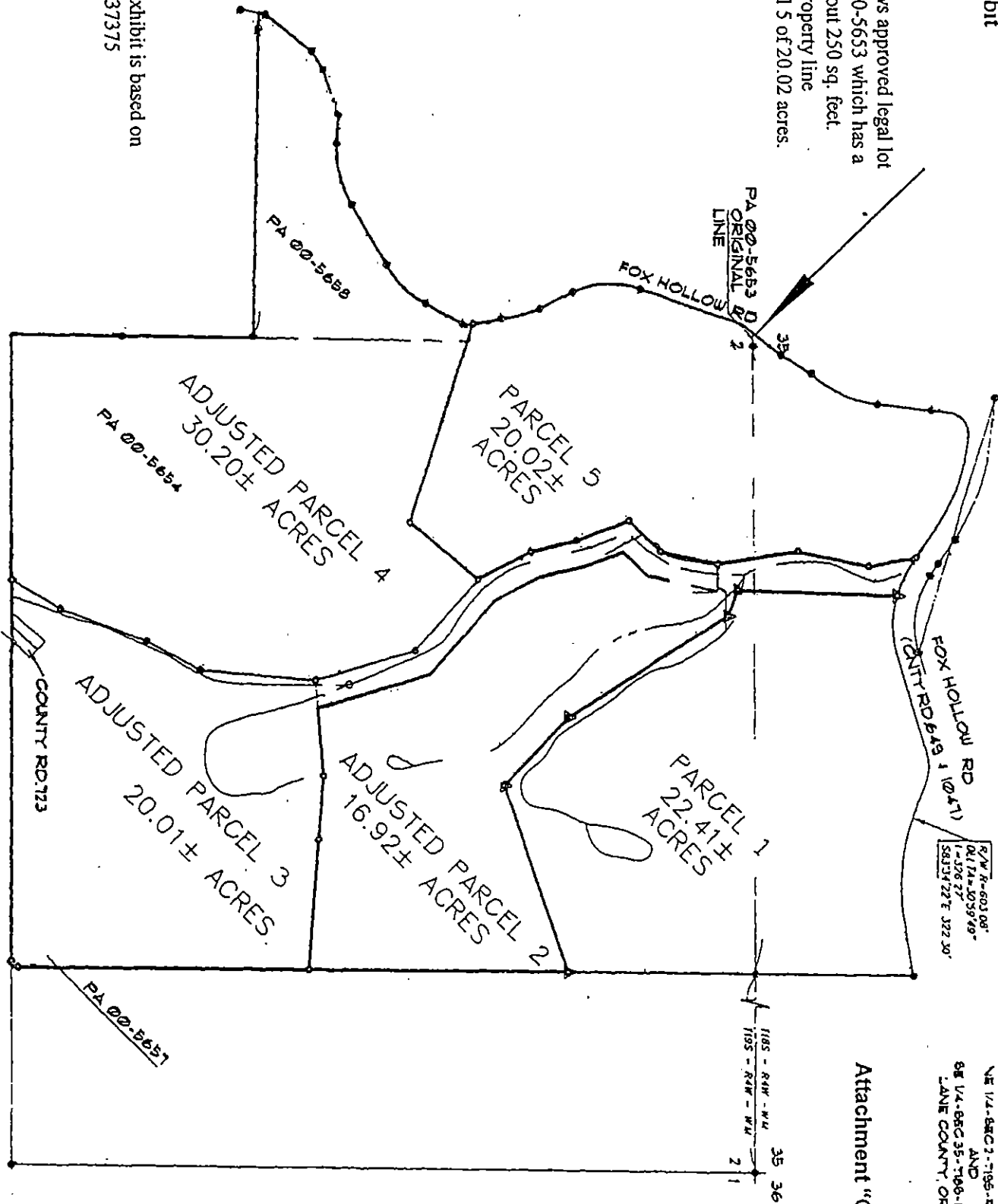
Note: This exhibit is based on survey CSF 37161

Attachment "E"

This is not a survey
It is an exhibit

This exhibit shows approved legal lot verification PA 00-5653 which has a usable area of about 250 sq. feet. The legal lot is property line adjusted to Parcel 5 of 20.02 acres.

Note: This exhibit is based on survey CSF 37375



R/W R-603 00'
DLT 1A=1059'99"
1-126 37'
S83D72'E 322 30'

Attachment "G"

NE 1/4-SEC 2-7196-R4U-W-1
AND
SE 1/4-SEC 35-7196-R4U-W-1
LANE COUNTY, OREGON

SCALE: 1" = 100'
ORIGINAL



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

635 Capitol St. NE, Suite 200

Salem, Oregon 97301-2540

Phone (503) 373-0050

Director's Fax (503) 378-5518

Main Fax (503) 378-6033

Rural/Coastal Fax (503) 378-5518

TGM/Urban Fax (503) 378-2687

Web Address: <http://www.lcd.state.or.us>

February 9, 1999

Post-it* Fax Note	7671	Date	2/10/99	# of pages	6
To	ANNE DAVIES	From	Dele Jordan		
Co./Dept.		Co.			
Phone #		Phone #	373-0050 x262		
Fax #	541-344-6266	Fax #			



Matt Spangler, Director
Lincoln County Planning Division
210 SW Second
Newport, Oregon 97365

RE: Compliance with Enforcement Order (97-EO-00754): Legal Lots and Parcels

Dear Matt:

The department has completed its review of Lincoln County's proposed text amendments to the A-C (LCC 1.1373) and T-C (LCC 1.1375) zones with respect to the definitions of what constitutes a lawful lot or parcel under Oregon land use law. These changes are being proposed to comply with the requirements of Enforcement Order 97-EO-00754. We have discussed this matter on several occasions and also submitted prior comments dated February 17, 1998 and March 9, 1998. Based on our review and research, the county's proposed amendments do not comply with the applicable provisions of Oregon law as required by the enforcement order for the following reasons.

Enforcement Order

The central issue in the adoption of the commission's enforcement order was the contention that Lincoln County routinely regards a parcel that is divided by a public road as two legal and discrete parcels. The County did not dispute that this was its practice. The petitioner and the department asserted that this practice is unlawful since ORS 92.010(7)(d) clearly provides that "any property divided by sale or grant of property for state highway, county road, city street or other right of way purposes shall continue to be considered a single unit of land..." This language was adopted by the Legislature to clearly and expressly state what was already the law in Oregon. [See State v. Emmich, 34 Or App 945, 949 (1978); Hershberger v. Clackamas County, 15 Or LUBA 401, 404 (1987) and O'Brien v. Lincoln County, 31 Or LUBA 262, 265 (1996)]. Further, ORS 92.012 states that "[n]o land may be subdivided or partitioned except in accordance with ORS 92.010 to 92.190."



Matt Spangler

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Relative to this issue, the stipulated enforcement order requires the county to amend the Lincoln County Code (LCC), Chapter 1, as follows:

"b. Amend LCC 1.1373 and 1.1375 to conform with the statutory definitions of 'lot,' 'partition land,' and 'parcel' as contained in ORS 92.010(3), 92.010(7) and 215.010(1), respectively. The County shall review and amend as necessary LC 1.1115 to ensure there are no conflicts with the new or amended definitions of 'lot,' 'parcel' and 'partition land.'" (Section 1.b. of Order)

County Response

The County's proposed revisions include amendments in response to the enforcement order. The proposed amendments include new definitions of the required terms "lot," "parcel" and "partition land." Our primary concern involves the proposed definitions for the terms "parcel" and "lawfully created lot or parcel" (LCC 1.1371(3) & (4)). Specifically, we do not believe that the proposed revisions to LCC 1.1371(3)(b), (4)(d) and (4)(f) correctly reflect state law or are consistent with ORS 215.010(1), ORS 92.010(7)(d) and ORS 92.014. The county's proposed provisions state:

"(3)(b) Units of land in the same ownership which are physically separated by another unit of land in a different ownership are considered separate parcels, notwithstanding the fact that such units of land may have been or are described or conveyed on a single deed or lands sales contract."

"(4)(d) Parcels created by deed or land sales contract after February 12, 1974 [effective date of Lincoln County Ordinance #34, Zoning] and before September 22, 1982 (effective date of Lincoln County Ordinance #180, Minor Partitioning Procedures) in conformance with lot size requirements imposed by zoning in effect at the time of creation.", and

"(4)(f) Parcels created in accordance with zoning regulations in effect at the time of creation, through division by a public road or alley created prior to November 5, 1991."

Department Review

In summary, these proposed revisions to the Lincoln County Code (LCC) recognize as legal and discrete units of land that are not "parcels" as defined in ORS 215.010(1). Thus, they are inconsistent with ORS 92.010(7)(d), 92.012 and 92.014 [See statutory provisions attached]. The department's concerns for each section are as follows:

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LCC 1.1371(3)(b):

This provision, as written, can be construed to recognize as parcels, units of land separated by a public road or other right of way because the public road or right of way could be considered "in a different ownership." This is not allowed under ORS 92.010(7)(d) and ORS 92.014. These two statutory provisions require subdivision or partition before property can be considered divided.

LCC 1.1371(4)(d):

This provision is intended to recognize as parcels, units of land created by deed or land sales contract between the time the county began zoning and the effective date of its minor partition ordinance. However, this will allow for the recognition of units of land not lawfully created in compliance with statewide goal 3 and ORS 215.263(1) (1981 edition) during the time these provisions were required to be applied to agricultural land by Lincoln County.

Statewide Planning Goal 3 "Agricultural Lands" became effective and applicable to land use decisions on January 1, 1975. Goal 3 required that agricultural land be "preserved by adopting exclusive farm use-zones pursuant to ORS Chapter 215." It also required that new farm parcels be "appropriate for the continuation of the existing commercial agricultural enterprise within the area."

ORS 215.263(1) was amended by the 1981 Legislature to make mandatory the prior review and approval or disapproval of any proposed division of land. This amendment became effective on August 24, 1981 [Section 48, Chapter 748 Oregon Laws 1981]. It required:

"(1) Any proposed division of land included within an exclusive farm use zone resulting in the creation of one or more parcels of land shall be reviewed and approved or disapproved by the governing body of the county in which such land is situated. The governing body of a county by ordinance shall require such prior review and approval for such divisions of land within exclusive farm use zones established within the county."

Lincoln County amended its comprehensive plan and land use regulations in order to comply with the statewide planning goals including the application of an EFU zone on June 30, 1980. These amendments were required to comply with the statewide goals and statutory EFU zoning provisions. Land use decisions made after the adoption of these local amendments but before their acknowledgment by LCDC could not just rely on these locally adopted EFU provisions but also were required to apply directly statewide goal 3, "Agricultural Lands" and the statutory EFU zone provisions. [See Sunnyside Neighborhood v. Clackamas County, 280 Or 3 (1977), Meeker v. Clatsop County, 287 Or 665 (1979) and Jurgenson v. Union County, 42 Or App 505 (1979)].

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Thus, without a review for compliance with the applicable Goal 3 and statutory EFU standards, no unit of land created by deed or land sales contract after the 1981 Legislative mandate to review all land divisions in EFU zones under ORS 215.263(1) can be considered a lawfully created parcel.

LCC 1.1371(4)(f):

This provision intends to recognize units of land divided by public road or alley created prior to November 5, 1991, the effective date of Section 1, Chapter 763 Oregon Laws 1991 (SB 548). This Act amended ORS 92.010(7)(d) by adding to the statute a provision making clear that property had to be formally partitioned before it could be considered lawfully divided, and that the existence of a public road or other right of way, regardless of the nature or extent of the public ownership interest, did not in itself create new parcels. The county reasons that prior to this Act, public roads and other rights of way could be deeded to divide property. The County's reading of the statute is incorrect.

The amendment made by SB 548 was not new law but merely affirmed and continued the longstanding law as explained in several cases. [See Columbia County v. O'Black, 16 Or App 147 (1974), Scenic Sites v. Multnomah County, 33 Or App 199 (1978), State v. Emmich, 34 Or App 945, 949 (1978); and Hershberger v. Clackamas County, 15 Or LUBA 401, 404 (1987)]. The amendment is also a further clarification of the longstanding requirement in ORS 92.014 that "a street or road" cannot be used for the purpose of partitioning property "without the approval of the city or county..." (Section 3 Chapter 756 Oregon Laws 1955 & Section 4 Chapter 696 Oregon Laws 1973).

No beginning or end date is appropriate to use with regard to this provision. Since Oregon established subdivision and partitioning statutes, it has not been acceptable to consider property divided merely because it is crossed by a public road or other right of way. A unit of land described on a recorded deed by one single metes and bounds description "does not lose its unitary character by the happenstance of an intersecting boundary line, street or dedicated road." State v. Emmich, 34 Or App 945, 949 (1978).

The fact that this legal principle was not codified in state statute until 1991 does not allow a county to continue its prior improper practice of recognizing such units of land as being divided. Units of land defined by a unitary description on their recorded deeds remain a single discrete parcel regardless of any intersecting roads or other right of way.

Matt Spangler

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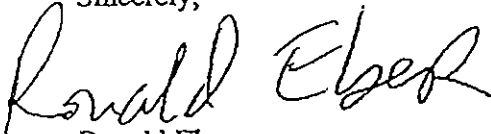
Summary

In order to comply with the Enforcement Order 97-EO-00754, the department recommends that Lincoln County do the following:

- (1) Delete the proposed Section (4)(f) of LCC 1.1373;
- (2) Amend Section (3)(b) to avoid any interpretation that recognizes lots or parcels separated by a road or other right of way; and
- (3) Amend Section (4)(d) so that units of land created by deed or land sales contract in the county's EFU zone after August 24, 1981 are not recognized as lawful unless in conformance with the applicable standards in ORS Chapter 215 and the statewide goals as well as any local zoning provisions, consistent with these statewide standards, in effect at the time the deed or land sales contract was recorded.

I trust this clarifies the department's position of Lincoln County's response to this part of the Enforcement Order and if you have any questions, please call me at (503) 373-0050 x 247.

Sincerely,



Ronald Eber
Rural Lands Specialist

c: Wayne Belmont, Lincoln County Counsel
Anne Davis, Attorney for Petitioner
Dennis Bartoldus, Attorney for Intervenor
Celeste Doyle, DOJ
Roger Alfred, DOJ
James Knight, DLCD
Dale Jordan, DLCD

ORIGINAL

Attachment "I"
Page 1 of 4

March 9, 2000

Mr. Kent Howe, Director
Lane County Land Management Division
Public Service Building
125 E. 8th Ave.
Eugene, OR 97401

Dear Mr. Howe:

Please find the attached Lane County Hearings Official's decision denying the Gorham request (PA 98-1633) for the rezoning of tax lot 905, assessor's map 20-05-22 from RR-10 to RR-5.

Sincerely,


Gary L. Danielle
Lane County Hearings Official

Attachment "I"

Page 2 of 4

- b. *ORS 92.010(7) does not allow a parcel to be legally divided by the intersection of a right-of-way.*

The fact pattern regarding this issue is as follows: Fire Road was created from the dedication of easements to the County in 1918. Shortly thereafter, common law in Oregon was interpreted to hold that a dedicated road did not divide a piece of property into two legal lots. In 1987, the County defined the term "contiguous" in its Code and has since applied this interpretation to its treatment of legal lot status. There is no evidence that this definition appeared in the body of Lane County regulations at an earlier date.

Presumably, the applicant purchased the subject property (as it was configured before the various lot line adjustments) as a single unit of land. On November 5, 1991, Section 1, Chapter 763 of Oregon Laws 1991, amended ORS 92.010(7)(d) to provide that the division of property by the sale or grant of property for road purposes did not serve to divide the property into separate legal lots.

The applicant's argument that Fire Road divides tax lot 905 into two legal lots is based upon the following two assumptions: (1) Fire Road has not been vacated; and (2) Lane County regulations, specifically the definition of "contiguous" that appears in Section 16.090 of the Lane Code, permit a road to divide a parcel into legal lots. For the reasons articulated above, the hearing official agrees with the applicant on his first assumption. It is the second assumption that the hearing official finds less convincing.

In a land use context, common law in Oregon holds that "a parcel of land does not lose its unitary character ... by the happenstance of an intersecting boundary line, street or dedicated road."⁹ The theory behind this position was first applied to homestead law in 1924¹⁰ but more recently has been associated with the administration of the Oregon Subdivision Control Law.¹¹

In the present case, the County hangs its interpretive hat on the definition of "contiguous" found in section 16.090 of the Lane Code. This definition, which was adopted in 1987, states that "Tracts of land under the same ownership and which are intervened by a street ... shall not be considered contiguous." It has been the consistent practice of the administrative land use branch of the County to interpret this definition to mean that a parcel under single ownership that is divided by a street or road becomes two legal lots.

A conclusion that a road bisecting a parcel results in the legal division of that parcel of land does not necessarily follow from the Lane Code's definition of "contiguous."¹² That is, there is no citation to legislative history of this code section that explains the reasons or circumstances that led to this definition. There is no guidance about whether there is a distinction between roads that are created through the dedication of easements, reflecting past practice, and roads that are dedicated in fee simple, which is a more prevalent practice today. Nor is there a citation to where the County Board of Commissioners have either expressly or impliedly embraced the current interpretation.

Even if it can be assumed that the LC 16.090 definition of "contiguous" is a clear expression of a legislative policy to allow the creation of legal lots through the bisection by a road easement, the hearing official believes that this policy conflicts with Oregon law regarding the division of parcels. First, it was suggested by the *Emmich* court that common law regarding the division of land by an intersecting road was consistent with the Oregon Subdivision

⁹ *State v. Emmich*, 34 Or App 945, 949 (1978) It should be noted that the *Emmich* court expressly differentiated between a situation where a parcel was separated by a parcel of land in separate ownership and the mere dedication of a road.

¹⁰ *Cabler v. Alexander, Sheriff, et al.*, 111 Or 257, 266-267 (1924). It is interesting to note that the Oregon Supreme Court specifically determined that parcels were "contiguous," for purposes of Oregon homestead law, if they were only separated by a street or alley. *Cabler* at 271.

¹¹ *State v. Emmich*, loc. cit.

¹² See, for instance, *City of Lake Oswego v. Grimm's Fuel Co.*, 34 Or App 67, 71 (1978), where an undeveloped road separating two portions of a quarry did not change the unitary nature of a nonconforming use.

Control Law. Second, it can be strongly argued that common law is embodied within ORS 92.014(1), a provision adopted in 1955¹³ that prohibits the creation of a road for the purposes of partitioning land without approval of applicable local government. Finally, even if ORS 92.010(7)(d) was a codification of existing case law, it operated to truncate any rights that the owner of tax lot 905 may have as those rights were not exercised prior to the 1991 adoption of the statute. That is, there is no evidence in the record that the applicant purchased tax lots 905A and B through separate deeds or that any actions have been taken in reliance upon LC 16.090's definition of "contiguous" until the first lot line adjustment in 1998. The applicant has argued that ORS 92.010(7)(d) is not applicable as the "sale or grant" of property creating Fire Road occurred prior to the operative effective date of ORS 92.010(7)(d). The hearings official believes that ORS 92.010(7)(d) represents a codification of common law and judicial interpretation of the Oregon Subdivision Control Act in regard to the definition of "partition land." In this respect, ORS 92.010(7)(d) can be distinguished from ORS 92.010(7)(a) where, for instance, the existing law was changed by statutory modification. ORS 92.010(7)(d) is similar to ORS 92.010(7)(b) in that both provisions clarify the prior intent of the statutory definition of "partition land."

It is therefore the conclusion of the hearings official that tax lots 905A and 905B constitute one legal lot

¹³ Section 3, Ch. 756 Oregon Laws 1955.