

W. T. C. I.

## AGENDA COVER MEMO

**DATE:** December 18, 2006 (Date of Memo)  
January 10, 2007 (Date of Meeting)

**TO:** Lane County Board of Commissioners

**DEPT.:** Public Works Department

**PRESENTED BY:** Jerry Kendall, <sup>JK</sup> Land Management Division

**AGENDA ITEM TITLE:** Order No. 07-\_\_\_\_\_ / In the Matter of Electing Whether or Not to Hear Arguments on an Appeal of the Hearings Official's Reconsidered Decision, affirming the Planning Director's decision, and Denying a Legal Lot Determination (file PA 06-5843/Hogrefe).

### I. MOTION

MOVE TO ADOPT THE ORDER ESTABLISHING THE BOARD'S ELECTION TO NOT HEAR ARGUMENTS IN AN APPEAL OF THE HEARINGS OFFICIAL'S RECONSIDERED DECISION AND TO AFFIRM THE HEARINGS OFFICIAL'S INTERPRETATION OF LANE CODE ON THE RECORD.

### II. ISSUE OR PROBLEM

An appeal to the Board, contesting a Hearings Official denial of a legal lot, has been received by the Director. Pursuant to Lane Code 14.600, the Board must now decide whether or not to hear the appeal by applying criteria set forth in the Code.

### III. DISCUSSION

#### A. Background

1. Property involved in this action is identified as the northern portion of tax lot 400, map 17-02-36.4, a .17-acre wedge shaped vacant property located due east of 8525 McKenzie Highway, Springfield. Refer to the map on the following page. The property is designated Rural Land by the Rural Comprehensive Plan and is zoned RR-2.
2. In the form of application PA 06-5305, the property owner in February 2006 requested that the Land Management Division (LMD) verify that the subject property was a lawfully created parcel. On April 26, 2006, the LMD determined that the subject property was not lawfully created. In order to appeal that administrative decision, the owner applied to have notice of the determination performed pursuant to LC 13.020. That application file number is PA 06-5843.
3. The Planning Director issued the notice for PA 06-5843 on June 1, 2006, denying the legal lot verification request.
4. A timely appeal of the Planning Director decision was filed by the owner on June 9, 2006.

FOR ASSESSMENT  
AND TAXATION  
ONLY

SE1/4 SEC. 36 T.17S. R.2W. W.M.  
LANE COUNTY  
SCALE 1" = 200'

LINE TABLE  
L1 557' 8.7422" V  
L2 328' 8.8913" V

SEE MAP 17 02 36 1

SUBJECT  
PROPERTY

HIGHWAY

17 02 36 4  
NAD 83/91

100

200 24.34 AC.

300

400

406 30.70

402

407

404

500

800

700

APPROX. CTR. SEC.

Mc KENZIE

Lot 4

30.93

Lot 5

102 10.07 AC.

101

5.25094

905

900

906 15.04 AC.

904 5.00 AC.

103

102

101

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5. A de-novo hearing before the Lane County Hearings Official was held on July 20, 2006, with the record closing on August 23, 2006.
6. On September 8, 2006, the Hearings Official issued a decision reversing the Planning Director, and determined the property to have been lawfully created.
7. A timely appeal of the Hearings Official decision was filed by the Planning Director on September 18, 2006, asking for reconsideration of the determination.
8. The Hearings Official agreed to reconsider, and held a limited reconsideration hearing on October 19, 2006.
9. On November 7, 2006, the Hearings Official issued the reconsidered decision, reversing his earlier decision and affirmed the original decision by the Planning Director, denying the legal lot status of the property.
10. On November 17, 2006, the owner filed a timely appeal.
11. On November 28, 2006, the Hearings Official refused to reconsider the decision, and affirmed his decision of November 7, 2006.

#### **B. Elective Board Review Procedure**

The Elective Board Review Procedure in Lane Code 14.600(2)(c) and (d) provides the Board with three options:

- To hear the appeal on-the-record,
- To not hear the appeal and to remain silent on the Hearings Official's decision, or
- To not hear argument in the appeal but to expressly agree with any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision being appealed and affirm the Hearings Official's decision.

The applicable subsections are:

*(c) The Board shall specify whether or not the decision of the Board is to have a hearing on the record for the appeal and shall include findings addressing the decision criteria in LC 14.600(3) below. If the Board's decision is to have a hearing on the record for the appeal, the Board order shall also specify the tentative date for the hearing on the record for the appeal and shall specify the parties who qualify to participate in the hearing on the record for the appeal.*

*(d) If the decision of the Board is to not have a hearing, the Board order shall specify whether or not the Board expressly agrees with or is silent regarding any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision being appealed. The Board order shall affirm the Hearings Official decision.*

If the Board's decision is to hear arguments on the appeal, then the Board must adopt an Order and findings specifying the tentative date for a hearing and the parties who qualify to participate in a hearing on the record for the appeal. Such an Order is not attached here and will need to be produced if the Board elects to hear.

In order for the Board to hear the appeal, the Decision Criteria of LC 14.600(3) requires that one or more of the four criteria cited below, be satisfied:

***(3) Decision Criteria. A decision by the Board to hear the appeal on the record must conclude the issue raised in the appeal to the Board could have been and was raised before the close of the record at or following the final evidentiary hearing and must comply with one or more of the following criteria:***

- a) The issue is of Countywide significance.***
- b) The issue will reoccur with frequency and there is a need for policy guidance.***
- c) The issue involves a unique environmental resource.***
- d) The Planning Director or Hearings Official recommends review.***

### **C. Analysis**

#### **Description of the proposal**

Tax lot 400 consists of two wedge shaped portions of land located between tax lots 403 and 406 (again, see the preceding map). Technically, this appeal is only for the northern portion of tax lot 400.

The owner seeks to have the subject property declared a legal lot. While the owner has not specified any future plans for the property, if the subject property qualifies as a legal lot, then the potential exists to perform a lot line adjustment and gain an additional homesite.

#### **Character of the Appeal.**

The subject property was created as a result of a partition of land, identified as partition M257-75, approved on January 28, 1976. The subject property was originally a portion of the property that was to be partitioned, but prior to the partition being finalized, the subject property was excluded from the proposed plat, with the understanding that it was to be conveyed to tax lot 403 adjacent on the west, through what would today be considered a property line adjustment<sup>1</sup>. Refer to the final plat, on the next page. Note that the subject property appears outside of the boundary of the plat. The actual conveyance did not occur until six years after the plat was finalized. The Planning Director has maintained that such was the true intention of the plat and was so implied by the struants (or "hooks") connecting the subject property to tax lot 403. The Appellant maintains that no such explicit condition was part of the partition, and that the fact remains that the subject property was created as a result of the partition process, and should therefore be considered a legal lot.

In his reconsidered decision of November 7, the Hearings Official dismissed the implied connotation of the struants, relying instead on the fact that the resulting subject property did not meet the minimum dimension standards of the land division code, LC 13.070(1) (version in effect in 1975). The standard in that provision was for newly created parcels to be 6,000 square foot minimum in area. The subject property is far below that requirement.

The Appellant argues that while the subject property was created at the time of the partition (1976), it was not subject to the minimum dimensions, as it was outside of the platted boundary.

The Appellant also argues that the Hearings Official's logic could expose (other) platted parcels to collateral attack if an error were made as to their minimum dimension standard. The Appellant maintains that the table in LC 13.070(1) is confusing and in any event should not be applied to the subject property. The Hearings Official simply maintains that although the subject property was created as a result of the 1975 partition process, it did not meet any of the dimensional standards of the 1975 land division code, and therefore was not lawfully created.

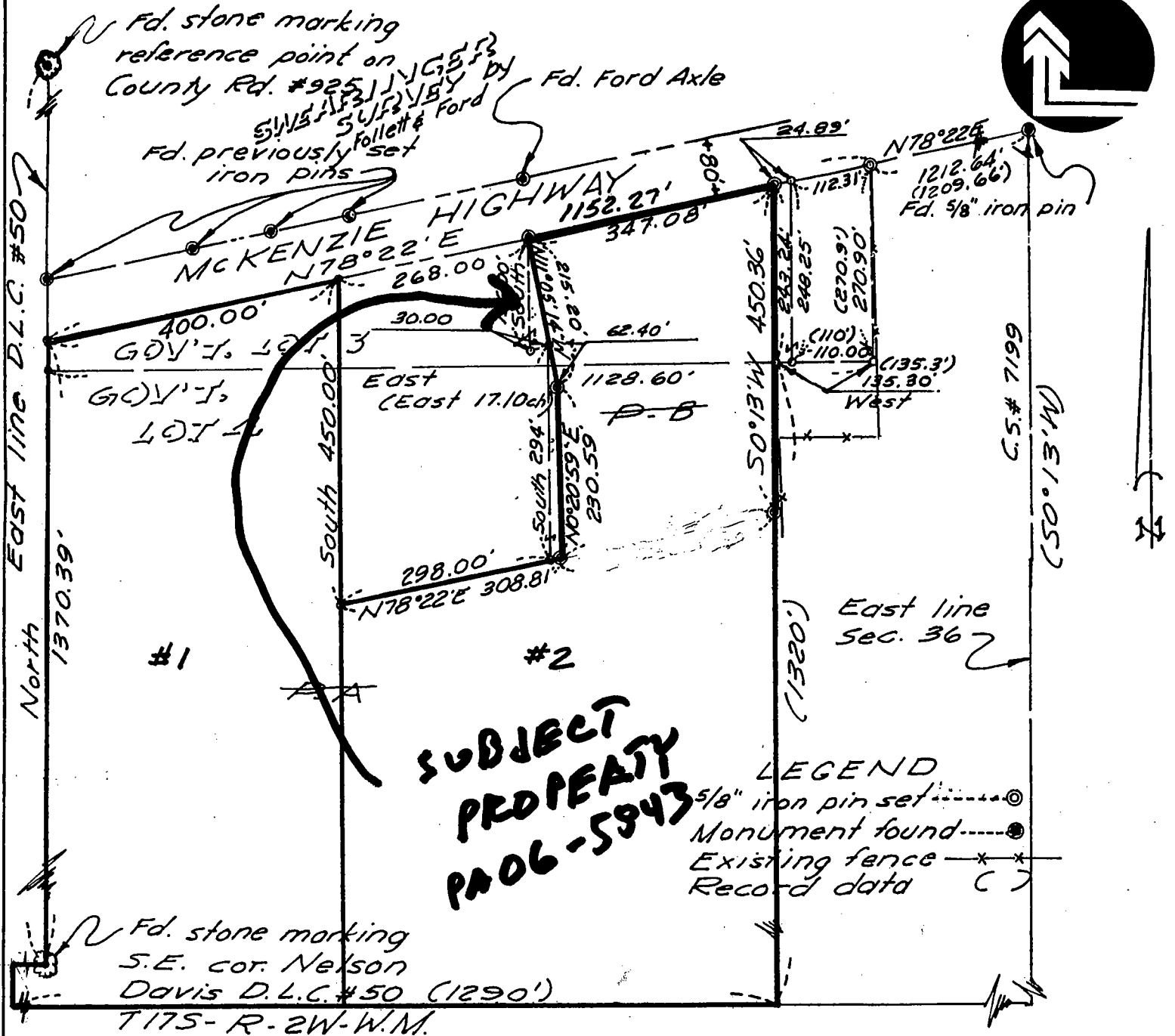
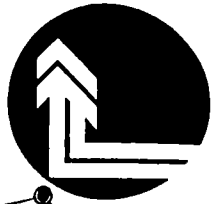
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<sup>1</sup> Per the testimony of 10-19-06 from Paula Norness, the surveyor who worked on the 1975 partition.

☒ MINOR  
☐ MAJOR

# partition

lane county



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
AUGUST 22, 1975  
PAULA LEE NORNESS  
1034

AMENDED PLAT BY APPLICANT,  
APPROVED 1-28-76, JOE H.  
HARRY T.

257 14

SCALE: 1" = 200'

FILE NO: 71 257-75

If, pursuant to Lane Code 14.600(2)(d), the Board agrees with the Hearings Official's reconsidered decision and affirmation thereof, it is then appropriate not to hear arguments on the appeal and to adopt the attached Order affirming and adopting the Hearings Official's justification for the decision, findings of fact, and conclusions of law as written in his decision of November 7, 2006.

If on the other hand the Board concludes that further interpretation of issues raised in the appeal is necessary, then it is appropriate to schedule an on the record hearing as authorized by Lane Code 14.600(2)(c) and conducted pursuant to Lane Code 14.600. A new Order with Findings will be needed in lieu of the attached Order.

#### Analysis of Election to Hear Criteria.

Each Lane Code 14.600(3)(a)-(d) election-to-hear criterion is presented below with the Director's analysis.

*1. The issue is of Countywide significance.*

The issues raised in this appeal pertain to a case specific set of facts which has not been found to have occurred in previously approved partitions. Therefore, the issue does not appear to be of countywide significance.

If, by chance a similar fact pattern emerges in a future case, the interpretation of law by the Hearings Official can be affirmed by the Board as an appropriate response to that fact pattern, and could be used in similar situations.

It thus falls to the Board to decide whether or not the resolution of the matter by the Hearings Official is satisfactory for use in similar actions. If so, adoption of the attached Order will establish the Board's affirmation and adoption of the Hearings Official interpretation. If not, the Board can go on and further interpret the Lane Code provisions following an on the record hearing.

*2. The issue will reoccur with frequency and there is a need for policy guidance.*

While many partitions were completed during the mid 1970's, the fact pattern of the present case is not expected to reoccur with frequency. There is no need for policy guidance if the Board agrees with the manner in which the Hearings Official implemented the Lane Code, especially LC 13.070(1) (1975 version).

*3. The issue involves a unique environmental resource.*

The property does not involve a unique environmental resource.

*4. The Planning Director or Hearings Official recommends review.*

Neither the Planning Director nor the Hearings Official recommends review of this appeal.

#### **D. Options**

1. To hear the appeal on the record;
2. To not hear arguments on the appeal, affirm the Hearings Official's reconsidered decision, and to expressly agree with his interpretation of the Lane Code; or
3. To not hear arguments on the appeal and to remain silent on the Hearings Official's decision and interpretations.

**E. Recommendation**

Option 2 is recommended.

**F. Timing**

If the Board elects to hear the appeal, a date for an on-the-record hearing will need to be established following adoption of an Order electing to hear.

**IV. IMPLEMENTATION/FOLLOW-UP**

Notify the parties of the Board decision to adopt the attached Order; or

If the Board elects to hear the appeal, a new Order and Findings will need to be prepared and adopted, and notice of a hearing given, as soon as possible.

**ATTACHMENTS**

1. Board Order electing to not hear the appeal, with Exhibits "A" (findings) and "B" (Hearings Official Reconsidered Decision, November 7, 2006 with Affirmation of decision, November 28, 2006) –19pp.
2. November 17, 2006 appeal by applicant/owner –5pp.
3. LC 13.070(1) (1975 version) excerpt –3pp.

The entire file record is available for the Board's review if further background information is desired. If an on-the-record appeal hearing is scheduled, a complete copy of the record with all evidence will be made available to the Board.

**IN THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON**

Order No. 07-\_\_\_\_\_

- ) In the Matter of Electing Whether or Not to Hear Arguments
- ) on an Appeal of the Hearings Official's Reconsidered
- ) Decision, affirming the Planning Director's decision and
- ) Denying a Legal Lot Determination (file PA 06-
- ) 5843/Hogrefe).

**WHEREAS**, the Lane County Hearings Official has made a reconsidered decision affirming a Planning Director denial of a Legal Lot determination application PA 06-5843; and

**WHEREAS**, the Lane County Planning Director has accepted an appeal of the Hearings Official's Reconsidered Decision to the Board of County Commissioners pursuant to LC 14.515; and

**WHEREAS**, the Lane County Hearings Official has affirmed his reconsidered decision on application PA 06-5843; and

**WHEREAS**, Lane Code 14.600 provides the procedure and criteria which 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, BE IT ORDERED** the Board of County Commissioners of Lane County finds and orders as follows:

1. That the appeal does not comply with the criteria of Lane Code Chapter 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 reconsidered decision dated November 7, 2006 interpreting applicable provisions of Lane Code, especially LC 13.070(1) (1975 version), attached as Exhibit "B", is affirmed and adopted by the Board of County Commissioners as its own interpretation in reaching a final decision on this application.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Chair, Lane County Board of Commissioners

APPROVED AS TO FORM

Date 1-3-2007 lane county

Stephen J. [Signature]  
OFFICE OF LEGAL COUNSEL



**FINDINGS IN SUPPORT OF THE ORDER**

1. Property involved in this action is identified as the northern portion of tax lot 400, map 17-02-36.4, a .17-acre wedge shaped vacant property located due east of 8525 McKenzie Highway, Springfield. The property is designated Rural Land by the Rural Comprehensive Plan and is zoned RR-2.
2. In the form of application PA 06-5305, the property owner in February 2006 requested that the Land Management Division verify that the subject property was a lawfully created parcel. On April 26, 2006, the LMD determined that the subject property was not lawfully created. In order to appeal that administrative decision, the owner applied to have notice of the determination performed pursuant to LC 13.020. That application file number is PA 06-5843.
3. The Planning Director issued the notice for PA 06-5843 on June 1, 2006, denying the legal lot verification request.
4. A timely appeal of the Planning Director decision was filed by the owner on June 9, 2006.
5. A de-novo hearing before the Lane County Hearings Official was held on July 20, 2006, with the record closing on August 23, 2006.
6. On September 8, 2006, the Hearings Official issued a decision reversing the Planning Director, and determined the property to have been lawfully created.
7. A timely appeal of the Hearings Official decision was filed by the Planning Director on September 18, 2006, asking for reconsideration of the determination.
8. The Hearings Official agreed to reconsider, and held a limited reconsideration hearing on October 19, 2006.
9. On November 7, 2006, the Hearings Official issued the reconsidered decision, reversing his earlier decision and affirmed the original decision by the Planning Director, denying the legal lot status of the property.
10. On November 17, 2006, the owner filed a timely appeal.
11. On November 28, 2006, the Hearings Official refused to reconsider the decision, and affirmed his decision of November 7, 2006.
12. The appeal states that the Approval Authority exceeded his jurisdiction, failed to follow applicable procedure, misinterpreted Lane Code and state law, made a decision that violated the code, the plan, the statewide planning goals and related administrative rules, and state statutes.
13. 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.*

14. The Board of Commissioners finds that the issues raised in this appeal pertain to a case specific set of facts which has not been found to have occurred in previously approved partitions. Therefore, the issue does not appear to be of countywide significance.

If a similar fact pattern emerges in a future case, the interpretation of law by the Hearings Official is affirmed by the Board as an appropriate response to that fact pattern, and can be used in similar situations.

15. The Board of Commissioners finds that while many partitions were completed during the mid 1970's, the fact pattern of the present case is not expected to reoccur with frequency. There is no need for policy guidance, as the Board agrees with the manner in which the Hearings Official implemented the Lane Code, especially LC 13.070(1) (1975 version).
16. The Board of Commissioners finds that the property does not involve a unique environmental resource.
17. Neither the Planning Director nor the Hearings Official recommends review.
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 January 10, 2007, and finds that the appeal does not comply with the criteria of Lane Code Chapter 16.600(3), and elects to not hold an on the record hearing.
20. The Board expressly agrees with the November 7, 2006 reconsidered decision of the Lane County Hearings Official interpreting Lane Code, especially LC 13.070(1) (1975 version), attached here as Exhibit "B". The Hearings Official's decision and interpretations are affirmed and adopted by the Board of County Commissioners as its own interpretation.

**LANE COUNTY HEARINGS OFFICIAL  
RECONSIDERATION OF HEARINGS OFFICIAL LEGAL LOT DETERMINATION**

**Application Summary**

Dean Hogrefe, P.O. Box 1324, Springfield, Or. 97477 requested Planning Director for the verification of legal lot status for the north portion of tax lot 400, assessor's map 17-02-36-40. The Applicant applied for a Preliminary Legal Lot Determination for the subject property on 2-22-06. The determination by the Planning Director, stating that the property was not a valid legal lot, was issued on 4-26-06. On 5-12-06 an application was made for the issuance of notice per LC 13.020 to enable an appeal of PA 06-5843. Notice was mailed on 6-1-06, and a timely appeal was filed on 6-9-06. The Director reviewed the appeal, accepted it, and affirmed the original decision. The Planning Director denied the legal lot status of the property and the applicant appealed in a timely manner to the Lane County Hearings Official.

The Hearings Official heard the appeal at a de novo hearing on July 20, 2006 and held the record open until August 23, 2006. Subsequently, a decision was issued reversing the Planning Director's denial of the request for the verification of legal lot status. The Planning Director filed a timely appeal and the Hearings Official agreed to reconsider his decision and ordered a limited reconsideration hearing subject to Lane Code 14.535(2)(c).

**Parties of Record**

Dean Hogrefe	Kim O'Dea	Bill Kloos	Kent Howe
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**Reconsideration History**

Reconsidered Hearing Date:                      October 19, 2006

Reconsidered Decision Date:                      November 7, 2006

**Appeal Deadline**

An appeal must be filed within 10 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 13.010

### **Findings of Fact**

1. The property subject to this application, hereinafter referred to as the "subject property," can be identified as the north portion of Tax Lot 400, Assessor's Map 17-02-36-40. The subject property is 0.17 acres in size and is zoned RR-2.
2. The Findings of Fact of the September 8, 2006 decision are incorporated by reference into this reconsidered decision except where explicitly modified or repudiated.
3. The intent of the drafters of the partition plat was that the remnant property between the partition and adjacent tax lot 403 be merged into tax lot 403 prior to or concurrently with the approval of the plat by the county. (Testimony of Paula Lee Norness.)
4. The term "struant" is also called a "hook" by cartographers. Hooks are used in two instances. First, a hook is used across dashed lines to indicate that the line does not denote a property boundary. Second, a broken hook on each side of any strip of land, be it a road, stream, or otherwise, is used to indicate that the ownership of the land on one side of the strip is the same as on the other side of the strip.<sup>1</sup> In the partition map for M 257-75, the boundary of adjacent tax lot 403 is indicated by the presence of a dashed line. The hooks straddle these lines.
5. The Planning Director submitted various partition maps upon which "hooks" were used. Some of the hooks denoted the presence of a road that bisected a piece of property and in other cases was used to show older, no longer existing lot lines. In all cases, however, the hooks were used within the boundaries of the partition map. That is, the struants indicated the legal status of the internal partition map boundaries at the time of approval and merely depicted that the boundary line between two proposed parcels had been adjusted or that the partition had been reduced from three to two parcels.
6. At the time tax lot 400 was partitioned through Partition m 275-75 it was not zoned.

### **Decision**

THE SEPTEMBER 8 HEARINGS OFFICIAL DECISION IS REVERSED AND THE PLANNING DIRECTOR'S DENIAL OF THE VERIFICATION OF THE LEGAL LOT STATUS OF TAX LOT 400, ASSESSOR'S MAP 17-02-36-40 IS REINSTATED.

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<sup>1</sup> *Cartographic Drafting Manual*, Chapter 11 (1981??), p 11-34.

### **Justification for the Decision**

In his request for reconsideration of the September 8, 2006 hearings official decision, the Planning Director argued that application for partition m 257-75 was only for the creation of two parcels and therefore could not have created three or more parcels. He further suggests that the decision would have a harmful precedent on past partitions where struants or hooks appear on a final plat. Finally, the Planning Director contends that it was clear from the intent of the applicant that the struants were intended to affect a property line adjustment, something that was not yet formally recognized by the Lane Code.

The present case raises two distinct issues. The first issue is whether partition m 257-75 inadvertently created a lot that was separate and distinct from the two lots created by the land division process associated with m 257-75. The second issue is whether a lot so created would constitute a legal lot.

**1. Was the subject property created by partition m 275-75?**

Regardless of whether the partition application in m 257-75 was for the creation of two parcels, the nature of the request does not necessarily determine the legal effect of the final action. At the time that the County gave final approval to the partition plat, the property that is subject to this appeal had not been transferred to the owners of tax lot 403.

As a part of his submission on reconsideration, the Planning Director entered 21 allegedly final partition maps into the record. These maps were approved between 1973 and 1975. As far as I can tell, none of these partitions involved the use of struants or hooks to denote the transfer of property through the movement of an external boundary of a partition map. In all cases, the struant/hooks were used to denote where either a single property ownership was bisected by a road, where an interior property line (now shown by a dashed line) had been moved, or where a lot line internal to the partition no longer existed. Except with the current case, the Planning Director has yet to show that a struant or hook was ever used to denote the future movement of an external plat boundary; particularly one that would require a property transfer by deed between different individuals. One must assume that the use of a struant/hook in Partition m 275-75 was an anomaly and will not affect past partition or subdivision actions taken between 1973 and 1975.

The Planning Director has also argued that the intent of the applicant was to show that the western boundary of the plat would eventually be adjacent to tax lot 403 and was used because property line adjustments were not at that time recognized by the code. I would disagree with this statement on two counts. First, Lane Code 13.010, as it existed at the time of partition m 275-75, recognized, by definition, property line adjustments. Second,

the Planning Director's witness testified that at the time the map in Partition m 275-75 was prepared it's drafters assumed that the property transfer would have already occurred or would occur concurrently with the approval of the partition plat map. In reality, the actual transfer of the property occurred six years after the approval of the partition plat map.

In the present case, the Planning Director has argued that the struant/hook was used to indicate that a property line was to be moved subsequent to final plat approval. Information provided by the Planning Director, however, demonstrates that a struant/hook is a cartographic device that is used to express an existing situation that may not be apparent from a cursory observation of a partition or subdivision map. It is not intended, nor can it legally represent, an action that is to occur after the approval of a plat map. It could not, for instance, force the owner of tax lot 403 to accept a transfer of the subject property. In practice, a struant/hook can only be used to indicate that a transfer has taken place prior to final plat approval and cannot be used to expand the boundaries of an approved partition plat at a later date.

Because the struant/hook could not operate to move the boundary of the partition plat map after adoption, it had the effect of creating a remainder of tax lot 400. In other words, partition m 275-75 had the unintended consequence of creating a lot, the boundaries of which are concurrent with what is now known as the subject property, and a similar remainder lot to the south.

**2. Is the subject property a legal lot?**

In my original decision, I determined that Partition m 275-75 created a remainder of land from the division of tax lot 400. The decision assumed without argument that the resulting lot was lawfully created. This was an error.

Clyde Hogrefe submitted his application for Partition m 275-75 on August 8, 1975 and the partition plat was approved on December 8, 1975. During this period of time, Ordinance 5-75, which was adopted March 26, 1975, controlled the division of land within Lane County. This ordinance, codified as Lane Code Chapter 13, required that land divisions be accomplished by partition or subdivision. The exceptions to this requirement were enumerated in Lane Code 13.010, where various actions such as property line adjustments, divisions of land resulting from lien foreclosures, and divisions of land made pursuant to a court order, were explicitly exempted from the land division regulations.

The creation of the subject property by virtue of being a remainder from a partitioning process is not, in of itself, fatal if the remainder otherwise conforms to minimum lot size standards. The subject property did not.

Tax lot 400 was not zoned at the time it was partitioned in 1975. Section 13.070(1) of the Lane Code, which was applicable at that time, prescribed dimensional standards for parcels and lots. The smallest minimum area allowed was 6,000 square feet if a parcel or lot was classified as being either urban or if it was located within a Major or Minor Development Center or a Rural Service Center, had access to a community water system and a community sewage facility, had a minimum average width of 60 feet and a minimum depth of 80 feet not exceeding 2 ½ times its average width. The subject property was larger than 6,000 square feet but it is improbable that it had access to a community water system and a community sewage facility. More importantly, it did not comply with the minimum width or depth standards of Lane Code 13.070(1) as it had a maximum width of about 30 feet and a length of at least 156 feet (five times its maximum width).

Essentially, the subject property was created as an illegal lot. One can argue that it has retained this status or that its illegal status was cured through merger by deed into adjacent tax lot 403. In either case, the subject property does not have legal lot status.

**Summary**

The applicant has not shown by the preponderance of the evidence that the subject property has legal lot status.

Respectfully submitted,



Gary Barnielle  
Lane County Hearings Official

**LANE COUNTY HEARINGS OFFICIAL  
APPEAL OF A PLANNING DIRECTOR LEGAL LOT DETERMINATION**

**Application Summary**

Dean Hogrefe, P.O. Box 1324, Springfield, Or. 97477 requested Planning Director for the verification of legal lot status for the north portion of tax lot 400, assessor's map 17-02-36-40. The Applicant applied for a Preliminary Legal Lot Determination for the subject property on 2-22-06. The determination, stating that the property was not a valid legal lot, was issued on 4-26-06. On 5-12-06, application was made for issuing of notice per LC 13.020 to enable an appeal, PA 06-5843. Notice was mailed on 6-1-06, and a timely appeal was filed on 6-9-06. The Director reviewed the appeal, accepted it, and affirmed the original decision. The Planning Director denied the legal lot status of the property and this approval was appealed in a timely manner by the applicant to the Lane County Hearings Official.

**Parties of Record**

Dean Hogrefe

Kim O'Dea

Bill Kloos

**Application History**

Hearing Date: July 20, 2006  
(Record Held Open Until August 23, 2006)

Decision Date: September 8, 2006

**Appeal Deadline**

An appeal must be filed within 10 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 13.010

**Findings of Fact**

1. The property subject to this application, hereinafter referred to as the "subject property," can be identified as the north portion of Tax Lot 400, Assessor's Map 17-02-36-40. The subject property is 0.17 acres in size and is zoned RR-2.
2. The ownership history of the subject property can be described as follows and is graphically illustrated in Exhibit A to this decision:
  - a. J.E. and Marguerite Columbus Oliver Finney transfer by warranty deed that portion of Government Lot 3 south of McKenzie Highway and Government Lot 4 to Clyde E. and Jessie Hogrefe. May 21, 1948. (Figure 1, Exhibit A)



- b. Clyde E. Hogrefe (unmarried) transfers tax lot 402 and 403 to Wayne and Frankie Hogrefe by land sales contract on April 22, 1959. (This deed gave an incorrect call that was corrected on April 19, 1960 with a modification to the 1959 land sales contract.) The terms of the land sales contract were ultimately satisfied and on April 28, 1966 Clyde transferred the ownership interest in the property to Wayne and Frankie Hogrefe by warranty deed. (Figure 2, Exhibit A)

- c. In 1975, Clyde requested that the remainder of Government Lots 3 (south of the McKenzie Highway) and 4, then known as tax lot 400, be partitioned. (Figure 3, Exhibit A) This partition (Partition M 257-75) was approved by the Lane County Land Development Review Committee (LDRC) on August 28, 1975. The western boundary of Parcel B of this partition, however, was not coterminous with the eastern border of tax lot 403, creating a remainder of two slivers of land. Combined, the two pieces comprised about 0.17 of an acre. Minutes of that LDRC meeting indicate that only two conditions of approval were required: (1) that Parcel B be surveyed and that its corners be monumented and (2) that the final partition map be submitted in a form suitable for recording. The minutes identify no condition of approval that ordered the partitioner to transfer the remainder of tax lot 400 to the owners of tax lot 403 nor was a note placed on the plat that required this action.

While final plat approval of the partition was not conditioned upon the sale of the unpartitioned slivers of land to the owners of tax lot 403, the shared boundary between each sliver of tax lot 400 and tax lot 403 was annotated on the final plat with what is known as a "struant" symbol. (see below)

- f -

These symbols, which were placed on the final plat by the applicant's surveyor, imply a recognition or intent that the unpartitioned slivers of land would be transferred to the owner of tax lot 403 at a future date. Lane County staff indicate that there may be other instances where the County applied the "struant" principle to partition approvals in the 1970s but could not identify those occurrences.

Tax lot numbers were assigned to the various parcels that collectively comprised the property partitioned. The two slivers of land that remained following the partitioning of tax lot 400 remained as tax lot 400. (Figure 4, Exhibit A)

- d. In January of 1976, Lane County approved a modification of Partition M 275-75. This modification did not correct the issue regarding the unpartitioned slivers of land (tax lot 400). (Figure 5, Exhibit A)
- e. Clyde Hogrefe passed away in 1979 and bequeathed tax lot 400 to Wayne and Frankie Hogrefe, husband and wife. The administrator of Clyde's estate transferred tax lot 400 to

Wayne and Frankie Hogrefe in June of 1979 by Bargain and Sale Deed. (Figure 6, Exhibit A)

### **Decision**

THE DECISION OF THE PLANNING DIRECTOR DENYING THE HOGREFE REQUEST (PA 06-5843) FOR A LEGAL LOT DETERMINATION OF TAX LOT 400, ASSESSOR'S MAP 17-02-36-40 IS REVERSED.

### **Justification for the Decision**

Lane Code 13.020(2) provides that a legal lot verification by the Director is considered final when, at the request of the property owner, it is noticed pursuant to LC 14.100 and reviewed pursuant to LC 14.050 (excluding 14.050(3)(c)). This procedure was followed.

Lane Code 13.010 defines "Legal Lot as "[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." This definition, which is essentially the same as that in ORS 92.017, gives legal lot status to lots that are lawful at the time of creation. Therefore, the burden is on the applicant to show that the subject property was legally created.

The applicant's argument is that the 1975 partition (M 257-75) created two remnants of land between the portion of tax lot 400 that was the subject of the partition and existing tax lot 403. Since these remnants were created through a formal partitioning process, they have legal lot status. The County takes a different position and points to the approved final plat of partition M 257-75, which shows a "struant" symbol crossing the connecting boundary between tax lot 403 and the two slivers of property. It argues that the use of a struant is a commonly understood way of expressing properties that are joined, and states that struants have been used by the County's Department of Assessment and Taxation to show that a property bisected by a body of water is actually one parcel. Apparently the County is treating the presence of a "struant" as a form of plat notation, such as the recognition of an easement, drainage way, setback or other encumbrance.

Despite the fact that the term "struant" is not found in the dictionary, it appears that it is a legitimate map device used to clarify a circumstance that may not be clear on a two-dimensional diagram. The use of a "struant" as an encumbrance, however, is on much murkier legal ground. In the present case, the County implies that the "struant" was used to bind the partitioner to transfer the land to the owner of adjacent tax lot 403. While it might be agreed that it bound the partitioner prior to final plat approval, it clearly could not bind the owner of tax lot 403 to accept such a transfer. Despite the family relationship between the owners of tax lot 403 and the partitioner it is not likely that the former would have accepted the transfer of property if it was known to be occupied by a leaky underground gasoline tank.

At the time of final approval, the partition plat clearly shows that two properties were created and that the subject property and its companion to the south were not included within the boundaries of that partition. Therefore, at the time of partition plat approval two remnant parcels were created and this situation is not changed by a plat note (struant) that indicates that the problem will be cured at a future date.

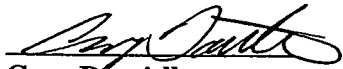
The County argues that to conclude that the partition created two landlocked parcels that were below minimum lot size would be contrary to established County policy. I cannot disagree with that conclusion. But even accounting for clarity of hindsight and an adjustment for the increased complexity of land use law since the 1970s, the approval of the Partition M275-75 was a testament to sloppy planning. The partition approval itself violated County policy and the attempted "fix" was to include a statement of intent that was unenforceable by the County after final plat approval. Nevertheless, the partition approval was not appealed and cannot be collaterally attacked.

There is no evidence that "struants" have been used in a similar context and it appears that their use in this case was an aberration. While the creation of the subject property in this manner offends good planning sensibilities, the determination of legal lot status does not mean that it is buildable. Prior to that stage the subject property will have to be enlarged through a property line adjustment and granted an access easement.

**Summary**

The applicant has shown by the preponderance of the evidence that the subject property has legal lot status.

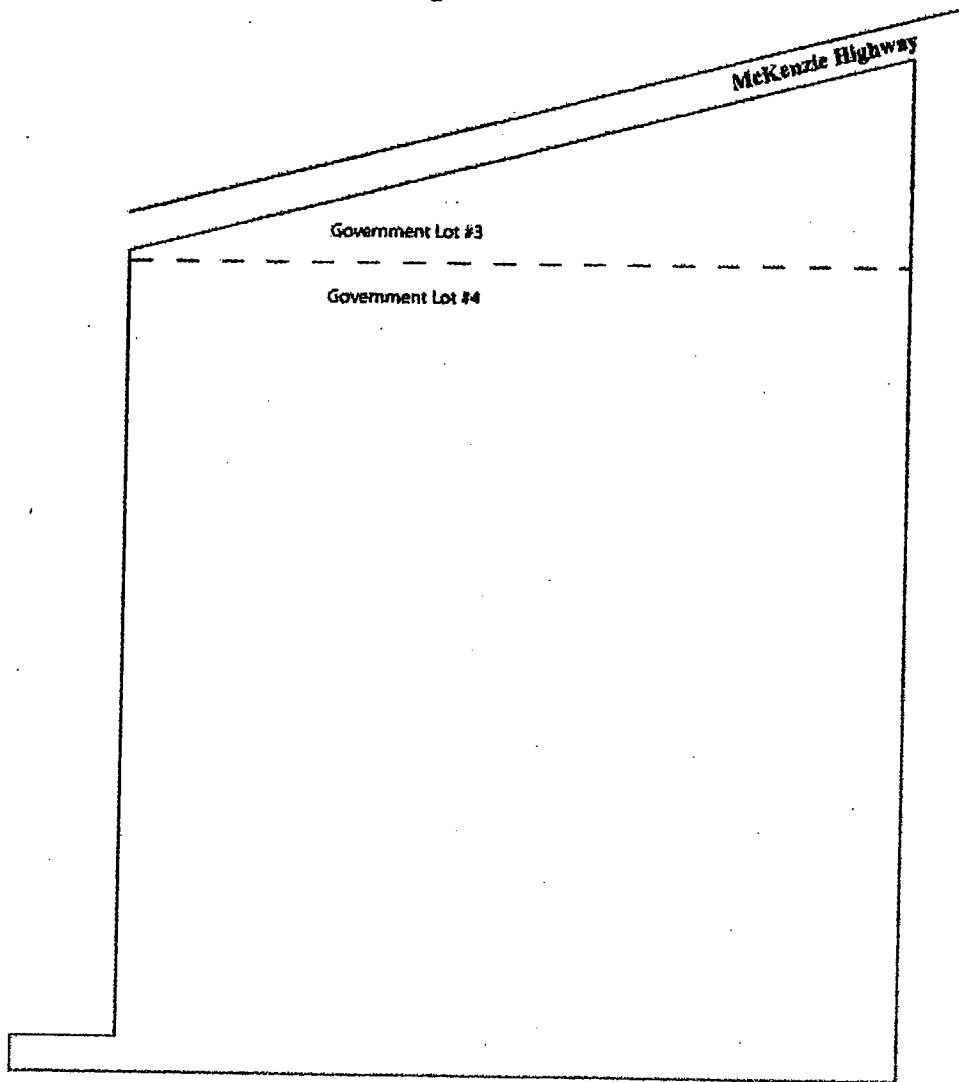
Respectfully submitted,



Gary Darnielle  
Lane County Hearings Official

**EXHIBIT A**  
**(PA 06-5843)**

**Figure 1**



**Figure 2**

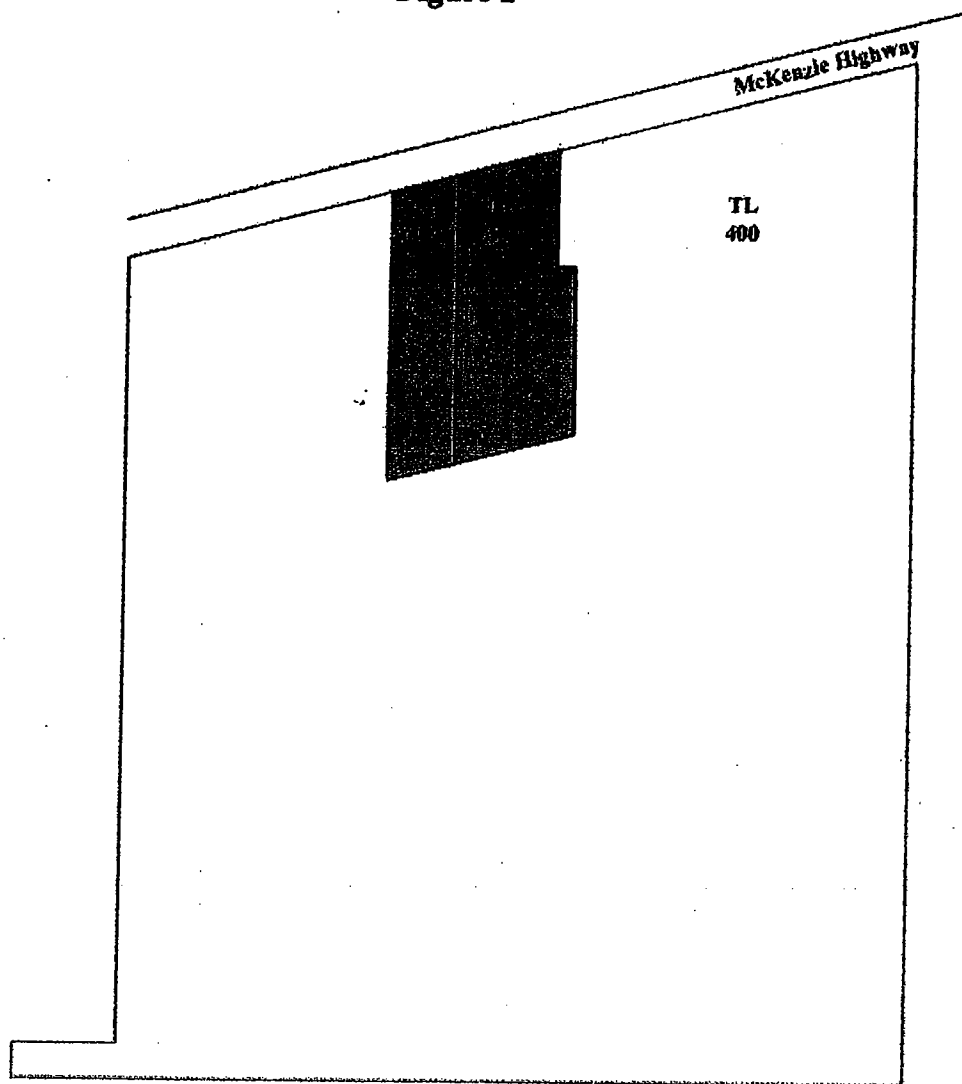
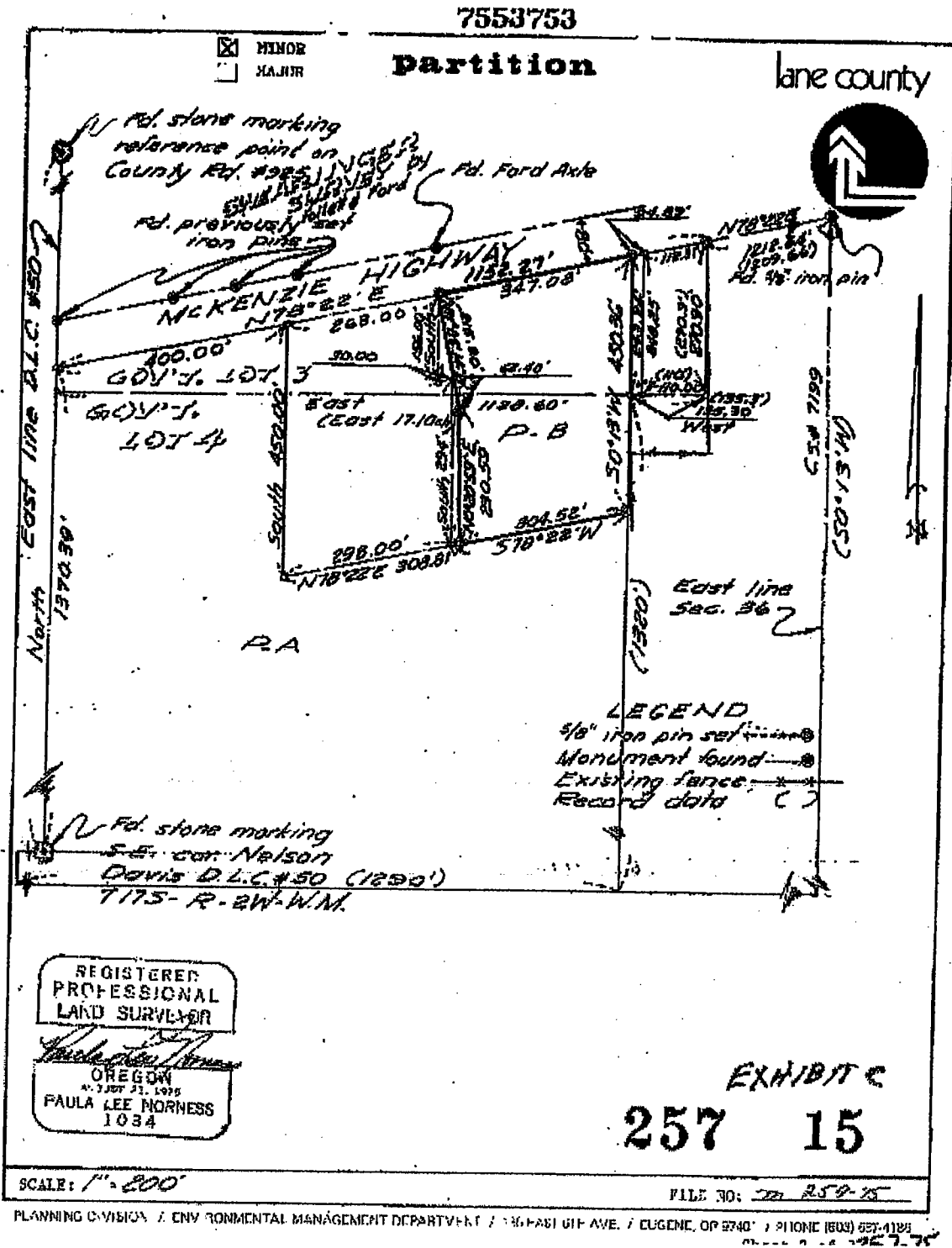
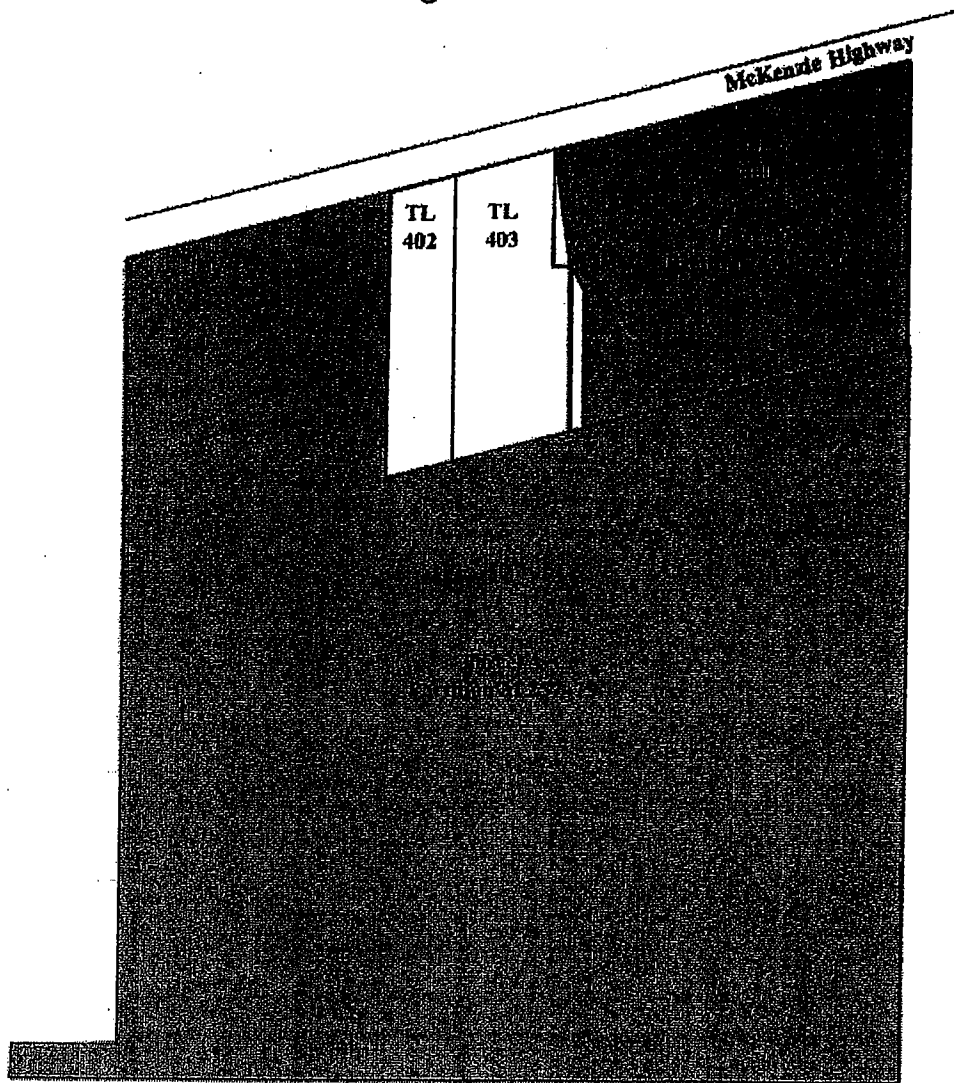


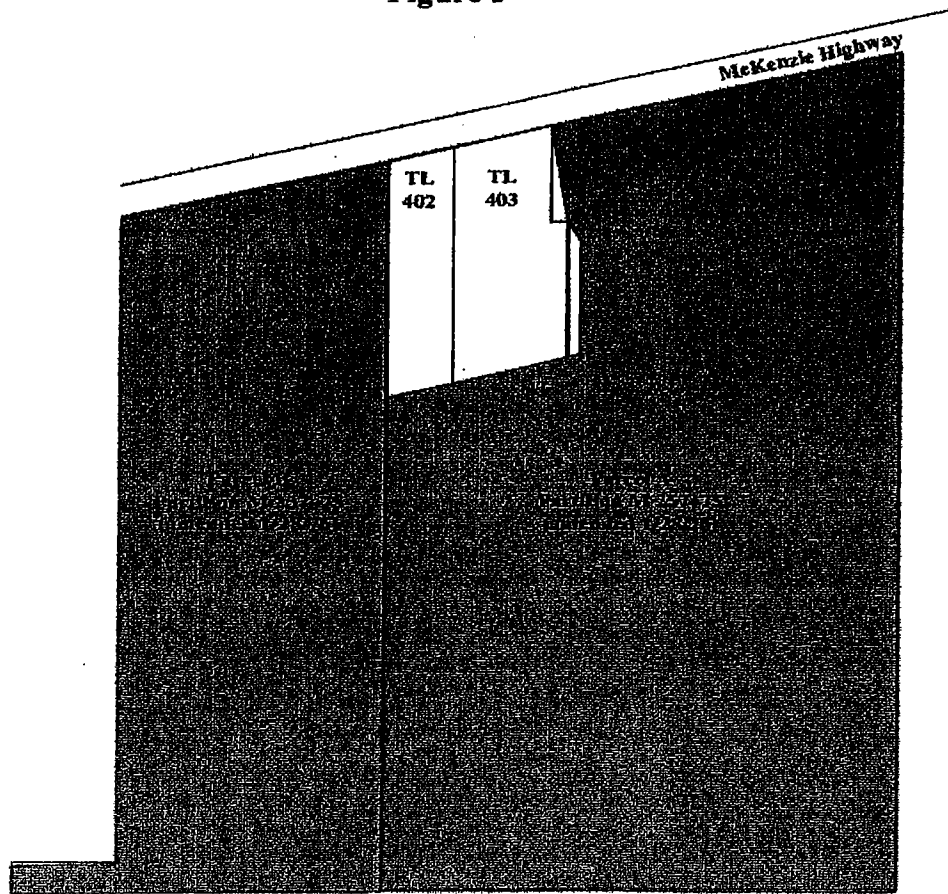
Figure 3



**Figure 4**

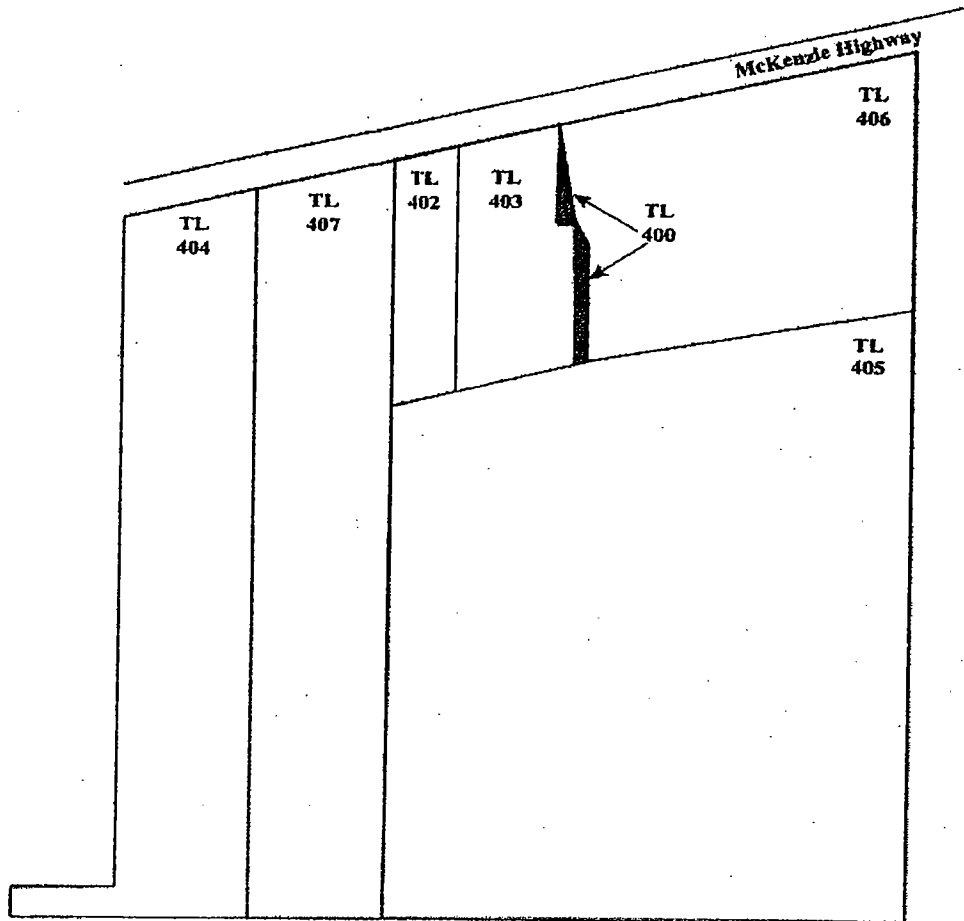


**Figure 5**





**Figure 6**





# Lane Council of Governments

99 East Broadway, Suite 400, Eugene, Oregon 97401-3111 (541) 682-4283 Fax: (541) 682-4099 TTY: (541) 682-4567

November 28, 2006

Mr. Kent Howe, Director of Planning  
Lane County Land Management Division  
125 E. 8Th Ave.  
Eugene, OR 97401

Re: *Request for Reconsideration of Hearings Official Decision in Hogrefe (PA 06-5843)*

Dear Mr. Howe:

The applicant has appealed my November 7, 2006 reconsidered decision in PA 06-5843 regarding the verification of the legal lot status for tax lot 400, assessor's map 17-02-36-40. Upon my review of this appeal, I find that the allegations of error have been adequately addressed in my decision and that a reconsideration of that decision is not warranted.

Accordingly, on the authority of Lane Code 14.535(a), I shall affirm my November 7, 2006 reconsidered decision.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gary L. Darnielle'.

Gary L. Darnielle  
Lane County Hearings Official

Cc: Jerry Kendall  
Bill Kloos

LAND MANAGEMENT DIVISION



# APPEAL OF A HEARINGS OFFICIAL DECISION

PUBLIC WORKS DEPARTMENT 125 E 8<sup>th</sup> AVENUE, EUGENE OR 97401  
Planning: 682-3807 Building: 682-3823 Sanitation: 682-3754

For Office Use Only: FILE # PA 06-5843 CODE: BCAPPEAL FEE: \$3,490

Appellant: DEAN HODGKINS 72

Mailing address: PO BOX 1324 Sfld OR 97477

Phone: 606-0967 Email: NONE

Signature: [Signature]

Appellant's Representative: BILL KRODS

Mailing address: 375 W/ 4TH AVE #204, EUGEN 97401

Phone: [Signature] Email: BILLKRODS@LANECOUNTY.ORG, OR

Signature: [Signature]

**Required submittals.** Your appeal application will be rejected if it does not contain all the required information.

1. A copy of the decision being appealed, with the department file number. File # PA 06-5843
2. The \$3,490 appeal fee, payable to Lane County. (See the reverse side for important fee information)
3. Indicate the deadline to submit the appeal. (Found in the Hearing Official's Decision) 11-17-06
4. Check one of the items below to identify your party status with the right to appeal the Hearings Official's decision:
  - ☐ I am the owner or contract purchaser of the subject property;
  - ☒ I am the applicant for the subject application;
  - ☐ Prior to the decision by the Hearings Official, I submitted written testimony into the record
  - ☐ I am not one of the persons mentioned above, but wish to appeal the Hearings Official's decision for the reasons explained in my letter.
5. A letter that addresses each of the following three standards:
  - a. The reason(s) why the decision of the Hearings Official was made in error or why the Hearings Official should reconsider the decision;
  - b. An identification of one or more of the following general reasons for the appeal, or request for reconsideration:
    - The Hearings Official exceeded his or her authority;
    - The Hearings Official failed to follow the procedure applicable to the matter;
    - The Hearings Official rendered a decision that is unconstitutional;
    - The Hearings Official misinterpreted the Lane Code, Lane Manual, State Law, or other applicable criteria.
  - c. The Hearings Official should reconsider the decision to allow the submittal for additional evidence not in the record that addresses compliance with the applicable standards or criteria.
6. Any additional information in support of your appeal.

**LAW OFFICE OF BILL KLOOS, PC**

OREGON LAND USE LAW

375 W. 4<sup>TH</sup> STREET, SUITE 204  
EUGENE, OR 97401  
TEL (541) 343-8596  
FAX (541) 343-8702  
E-MAIL BILLKLOOS@LANDUSEOREGON.COM

November 17, 2006

Lane County Land Management Division  
Public Works Department  
125 E. 8th Ave.  
Eugene, OR 97401

Re: Appeal to County Board of Hearings Official approval in PA 06-5843  
Peters Application; Map ~~15-12-27~~, TL 301 ~~400~~  
17-02-36-40

Dear Lane County Land Management:

Please accept this letter, together with the enclosed form, filing fee, Hearing Official decision, and supporting materials as an appeal of the November 7, 2006 Hearing Official decision on reconsideration in the matter above. A copy of the decision is attached as Exhibit A. A copy of the original decision is attached as Exhibit B. This appeal is filed under the provisions of LC 14.515, 14.535, and 14.600.

The appellant requests that the county board reinstate the initial decision of the Hearing Official approving the legal lot. The balance of this letter provides the required appeal information, with reference to the contents of an appeal, as listed in LC 14.515.

**LC 14.515(3)(a): Appellant.**

Deann Hogrefe, PO Box 1324, Springfield, Oregon 97477. Phone: (541) 606-0967.

**LC 14.515(3)(b): Party status.**

The appellant is the applicant for the subject legal lot determination.

**LC 14.515(3)(c): Relevant File Number.**

The file number is stated above.

**LC 14.515(3)(d): Bases and explanation of appeal.**

Appellants believe the Hearing Official exceeded his jurisdiction, failed to follow the applicable procedure, misinterpreted the code and state law, and made a decision that violates the code, the plan, the statewide planning goals and related administrative rules, and state statutes. The merits of the appellants' position has been briefed in detail to the Hearing Official.

The Planning Director initially denied the legal lot determination. The applicant appealed to the Hearings Official, who entered an initial decision finding that the subject property is a legal lot. See Exhibit B hereto. For purposes of his duty to exhaust all administrative remedies, the appellant hereby restates to the County Board all of the issues raised in his initial appeal of the denial to the Hearings Official and in his memoranda filed with the Hearings Official.

**(a) The Hearing Official's initial decision approving the legal lot was correct and should be reinstated.**

**(b) The Hearing Official's reconsidered decision denying the legal lot misinterprets and erroneously applies the law.**

The Hearings Official correctly determined that the filing of the 1975 partition created the subject sliver of land as a separate tract because, at the time the partition was recorded, the sliver was in the same ownership as the partition land, but it was not included within the bounds of the plat. However, he concluded that the separate tract is not a legal lot because it did not meet the dimensional requirements stated for partition parcels in the 1975 version of the land division code that was in effect.

There are a couple of errors apparent in the reconsidered decision. In each case the error is one of law.

**(1) This is legal lot because it was lawfully created by the filing of the plat.**

It is erroneous to make the "legal lot" status of the sliver contingent upon compliance with the 1975 lot dimension standards for partition and subdivision lots. A "legal lot" and a "partition parcel" or "subdivision lot" are not the same thing. The latter two must comply with the dimensional standards in the code in order to be created in a plat. The former, a legal lot, does not need to comply with lot or parcel dimension standards because it is neither a partition parcel nor a subdivision lot. It is a remnant created by the plat. It just needs to be lawfully created. Here it was lawfully created because it resulted from the recording of the plat.

With the recording of the plat, every discrete tract of land resulting from the recording of the plat became a legal lot, whether it was inside the plat or outside the plat, whether it complied with lot dimension standards or not.

Let's take the Hearing Official's theory, which he has applied outside the plat in this decision, and apply it inside the plat. Under the hearing official's theory, if one of the two parcels created inside the partition plat did not comply with county lot dimension standards at the time the plat was recorded (and such mistakes can easily happen), then the Hearing Official would hold today that the platted lot is not a "legal lot" in the meaning of the code because it was not created in compliance with the lot dimension standards in effect at the time. Under this theory, no owner of a platted lot or parcel today can be certain whether they have a legal lot. In

order to be sure, they need to investigate the standards in effect for lots and parcels at the time the plat was filed and reconfirm, with certainty if that is possible, that the lot or parcel conformed to the original standards. They might conclude that they did not conform originally; then how would they make their lot or parcel a legal lot now? They might conclude that they did conform originally; but how can be sure enough to sleep well at night; a neighbor could appear tomorrow and argue to the contrary about lot or parcel compliance in the 1975.

The Hearing Official might argue that one can rely on parcels created inside the plat as being legal lots, but can't rely on any tract outside the plat as being a legal lot. But there is no basis for this distinction. The Hearing Official has hung his hat on the fact that the sliver was created by partition filing, but the sliver did not conform to parcel dimension standards. This theory is not sensitive to being inside or outside the plat. And there is no basis for making that distinction.

The point is that chaos is only prevented if everyone can rely on recorded plats to having created "legal lots," whether those are parcels or lots inside a plat or remnant tracts outside the plat.

Another way to view this issue is to say that the holding of the Hearing Official invites a collateral attack on the validity of the 1975 partition, which would be an error. Allowing a collateral attack against the remnant lot is just as erroneous as allowing a collateral attack against one of the platted lots.

**(2) The 60-foot width standard for parcels in the 1975 code did not apply to this remnant because the remnant was not created as a "partition parcel."**

LC 13.070 (1975) stated the dimensional standards for partition parcels and subdivision lots. Whatever those standards required, they did not apply to the subject remnant tract because that tract was not created as either a partition parcel or a subdivision lot. It was just a legal lot created by the accident of the plat. It was error for the Hearing Official to say that the lot, which was created, is not a legal lot because it did not comply with dimensional standards that were not applicable to it.

**(3) Assuming the HO can revisit the legality of the parcels created in the 1975 partition, and assuming that the remnant tract needed to comply with the dimensional standards for lots and parcels in LC 13.070(1975), that code did not establish a 60-foot minimum width standard for lots.**

The decision assumes, without much discussion, that the 1975 code applied a 60-foot minimum lot width standard. It is not at all clear that it did. The language is in LC 13.070(1). To pick the standard one must apply "the closest applicable requirements of the table." None of the standards applies; and none of the standards is closest. The "urban" category does not apply. The "major and minor development centers" category does not apply. That leaves the "rural" category. That has three subcategories for 5-acre, 10-acre and 20-acre minimum lot size zones.

None of these applies to this unzoned area. This calls for guesswork, and the guesswork should not be the basis for finding a lawfully created tract being illegal for inadequate width.

Sincerely,

  
Bill Kloos

Encl.

- A. Copy of Nov. 7, 2006 Decision on Reconsideration
- B. Copy of September 8, 2006 Hearing Official Decision

> Note: ATTACHED TO  
BOARD ORDER

- 2K

12-18-06.

- (a) To prevent access to abutting land at the end of a road in order to assure the proper extension of the road pattern and the orderly division of land lying beyond the road.
- (b) To prevent access to the side of a road where additional width or improvement is required or future partition or subdivision action is needed.
- (c) To prevent access to the side of a road from abutting property that is not part of the division until proportional road construction costs are conveyed to the appropriate developer.
- (d) To prevent access to land unsuitable for development.
- (e) To prevent or limit access to roads classified as arterials and collectors.

13.060 Utility and Watercourse Easements.

(1) Utility Easements. The dedication of easements for the placement of overhead or underground utilities, including but not limited to electric power, communication facilities, sewer lines, water lines, and gas lines shall be required where necessary. Such easements shall be clearly labeled for their intended purpose on all maps and plats and may be located along or centered on parcel or lot lines or elsewhere as determined necessary by the County to provide needed facilities for the present or future development of the area.

(2) Watercourses. When a partition or subdivision is traversed by a watercourse such as a drainage way, channel, or stream, there shall be provided a storm water or drainage easement conforming substantially with the lines of the watercourse, and of such design and development as may be deemed necessary to accommodate reasonable anticipated future development within the drainage area.

13.065 Pedestrian and Bicycle Ways. When necessary for public convenience, safety, or as may be designated on an adopted master bike plan, the County may require that pedestrian or bicycle ways be improved and dedicated to the public. Such pedestrian and bicycle ways may be in addition to any standard sidewalk requirements of Lane Code, Chapter 15, Roads. Pedestrian and bicycle ways shall be not less than six feet in width and be paved with asphaltic concrete or portland cement concrete.

13.070 Parcels and Lots. The area, width, dept and layout of all parcels and lots shall meet or exceed the minimum requirements of this section. Such requirements represent minimum design standards for conditions of average natural conditions and development and may be increased or otherwise modified by the County when such standards are found to be inappropriate to a particular division or situation.

(1) Dimensional Standards. The minimum average width and minimum/maximum depth for parcels and lots shall be determined by the



appropriate classification and minimum established area requirements of the associated division as shown on the following table of "Minimum Dimensional Standards". When area requirements have not been established or specified for an area either by the Comprehensive Plan for Lane County or Lane Code Chapter 10, "Zoning", the minimum parcel or lot area shall be determined by water supply and sewerage facility requirements in which case width and depth requirements shall be based on the closest applicable requirements of the table. These standards shall be in addition to, and consistent with, the minimum area requirements of Lane Code, Chapter 10, "Zoning".

MINIMUM DIMENSIONAL STANDARDS FOR PARCELS AND LOTS

CLASSIFICATION		ESTABLISHED MINIMUM AREA	MIN. AVE. WIDTH	MIN/MAX DEPTH
RESIDENTIAL	URBAN	6000 Sq. Ft. -- with community water system and sewage facility.	60'	Min. of 80' & not more than 2-1/2 times ave. width.
		10,000 Sq. Ft. -- with community water system and indivi- dual sewage facility.	70'	Min. of 100' & not more than 2-1/2 times ave. width.
		1 acre -- with individual sewage and water facilities.	150'	Min. 200' & not more than 3 times ave. width.
	MAJOR & MINOR DEVELOPMENT CENTERS & RURAL SERVICE CENTERS	6000 sq. ft. -- with community water system and sewage facility.	60'	Min. of 80' & not more than 2-1/2 times ave. width.
		1 acre -- with community water system and indivi- dual sewage facility.	150'	Min. of 200' & not more than 3 times ave. width.
		2-5 acres -- with individual sewage & water facilities.	200'	Min. of 250' & not more than 3 times ave. width.
	RURAL	5 Acres --	300'	Not Applicable
		10 Acres --	450'	Not Applicable
		20 Acres --	600'	Not Applicable

Minimum Dimensional Standards for Parcels and Lots

CLASSIFICATION	ESTABLISHED MINIMUM AREA	MIN. AVE. WIDTH	MIN/MAX DEPTH
PLANNED UNIT DEVELOPMENTS (PUD)	The Standards of design of Lane Code, Chapter 10, Zoning, Section 10.700 shall apply to lots or parcels created as part of a Planned Unit Development application, however, the design requirements for lots or parcels of this section shall serve as a general guideline for a PUD.		
COMMERCIAL	The minimum dimensional standards for commercial divisions shall be determined by the county on the basis of the location and type of commercial activity proposed or anticipated. In determining minimum area requirements special emphasis shall be placed on access, circulation, and parking.		
INDUSTRIAL	The minimum dimensional standards for industrial divisions shall be determined by the County on the basis of the type of industrial activity proposed or anticipated. Safe, efficient access, and off street loading, parking and storage shall be required. Large basic lots may be created by the original plat to be partitioned into smaller parcels as specific needs arise.		