

GOAL ONE COALITION



Goal One is Citizen Involvement

TO: Steve Vorhes
FROM: Jan Wilson
DATE: February 25, 2008
RE: Proposed Lane County code amendments regarding property line adjustments and legal lot verifications.

INTRODUCTION

The following proposed amendments to Lane Code Chapter 13 would make LC Chapter 13 consistent with ORS Chapter 92 and would bring LC Chapter 13 into compliance with HB 2723 (retroactive unit of land validations) and HB 3629 (property line adjustments).

HB 2723 (2007) enacted standards and procedures for validating units of land that were created by a sale (i.e., the recording of a deed or land sales contract) if the unit of land could have complied with applicable land use regulations at the time it was sold or if the local government subsequently approved a dwelling on the property. However, units of land created after January 1, 2007 are not eligible.

The Court of Appeals in *Phillips v. Polk County* held that a property line adjustment results in “new” lots or parcels, and that any new parcel has to comply with the minimum size established for the zone. Thus any “adjusted” lot parcel smaller than the minimum size could not have complied with applicable land use regulations. Thus, even under HB 2723, Lane County may not retroactively recognize, through its legal lot verification process, any substandard sized lot or parcel created as the result of a property line adjustment.

HB 3629 (2008) was drafted in response to the Court of Appeals decision in *Phillips*. The bill authorizes counties to approve property line adjustments that result in the creation of substandard lots or parcels in specified circumstances.

The amendments proposed in this memo fall in three categories:

1. New provisions in Lane Code Chapter 13 to implement and comply with HB 3629 (property line adjustments).
2. Amendments to Lane Code Chapter 13 to comply with HB 2723 (retroactive validation of units of land).
3. Housekeeping and conforming amendments to Lane Code Chapter 13 definitions for consistency with ORS 92.010, HB 3629, and HB 2723.

PROPOSED AMENDMENTS TO LANE CODE CHAPTER 13

1. NEW PROPERTY LINE ADJUSTMENT SECTION TO IMPLEMENT HB 3629

HB 3629, passed during the 2008 special session of the Oregon legislature, amended ORS Chapter 92 to address issues raised by the *Phillips* decision. In order to comply with *Phillips* and the new law regarding property line adjustments, Lane County should amend its code to be consistent with the language in HB 3629.

Recommended new LC 13.450:

- (1) The Planning Director may approve a property line adjustment based upon findings that the following standards are met:
 - (a) An application is submitted and reviewed pursuant to LC 14.050; and
 - (b) Owners of both properties involved in the property line adjustment shall consent in writing to the proposed adjustment and record a conveyance or conveyances conforming to the approved property line adjustment; and
 - (c) The proposed property line adjustment shall relocate or eliminate all or a portion of the common boundary between only two abutting units of land, such that, following the adjustment, there remains only two units of land if the boundary is relocated or one unit of land if the boundary is eliminated; and
 - (d) The property line adjustment complies with ORS chapters 92 and 215.
- (2) Except as provided in this section, a unit of land that is reduced in size by a property line adjustment must comply with the minimum lot or parcel size in the zone after the adjustment.
- (3) Subject to subsection (4) of this section, the Planning Director may approve a property line adjustment in which:
 - (a) One or both of the abutting properties are smaller than the minimum lot or parcel size for the applicable zone before the property line adjustment and, after the adjustment, one is as large as or larger than the minimum lot or parcel size for the applicable zone; or
 - (b) Both abutting properties are smaller than the minimum lot or parcel size for the applicable zone before and after the property line adjustment.
- (4) On land zoned for exclusive farm use or forest, a property line adjustment under subsection (3) of this section may not be used to:
 - (a) Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;
 - (b) Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or
 - (c) Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.

2. AMEND LC CHAPTER 13 PROVISIONS CONCERNING LEGAL LOTS AND LEGAL LOT VERIFICATIONS TO ENSURE CONSISTENCY WITH HB 2723 AND HB 3629

HB 2723, passed during the 2007 session of the Oregon legislature, allows counties to retroactively recognize or “grandfather” units of land created other than by partition or subdivision, as long as the units of land could have complied with the rules existing at the time they were created. However, the “amnesty” nature of the legislation is indicated by the provision that it can not be use to create new illegally created parcels or lots after January 1, 2007. Lane County’s “legal lot verification” process is inconsistent with HB 2723 in a number of respects, and, because HB 3629 now provides clarity for property line adjustment requirements, Lane County should replace its legal lot verification process with code provisions that implement HB 2723 and HB 3629.

Existing LC 13.020:

Legal Lot Verification.

A legal lot verification by the Director is considered final when it is made and noticed pursuant to LC 14.100 and shall occur when:

- (1) An application is submitted and reviewed pursuant to LC 14.050, excluding 14.050(3)(c), for a legal lot verification on a lot or parcel resulting from a property line adjustment; or
- (2) If notice is requested by the property owner for any legal lot verification, upon submitting an application for review pursuant to LC 14.050, excluding 14.050(3)(c).

HB 2723, Section 2:

- (1) A county or city may approve an application to validate a unit of land that was created by a sale that did not comply with the applicable criteria for creation of a unit of land if the unit of land:
 - (a) Is not a lawfully established unit of land; and
 - (b) Could have complied with the applicable criteria for the creation of a lawfully established unit of land in effect when the unit of land was sold.
- (2) Notwithstanding subsection (1)(b) of this section, a county or city may approve an application to validate a unit of land under this section if the county or city approved a permit, as defined in ORS 215.402 or 227.160, respectively, for the construction or placement of a dwelling or other building on the unit of land after the sale. If the permit was approved for a dwelling, the county or city must determine that the dwelling qualifies for replacement under the criteria set forth in ORS 215.755 (1)(a) to (e).
- (3) A county or city may approve an application for a permit, as defined in ORS 215.402 or 227.160, respectively, or a permit under the applicable state or local building code for the continued use of a dwelling or other building on a unit of land that was not lawfully established if:
 - (a) The dwelling or other building was lawfully established prior to January 1, 2007; and
 - (b) The permit does not change or intensify the use of the dwelling or other building.
- (4) An application to validate a unit of land under this section is an application for a permit, as defined in ORS 215.402 or 227.160. An application to a county under this section is not subject to the minimum lot or parcel sizes established by ORS 215.780.

- (5) A unit of land becomes a lawfully established parcel when the county or city validates the unit of land under this section if the owner of the unit of land causes a partition plat to be recorded within 90 days after the date the county or city validates the unit of land.
- (6) A county or city may not approve an application to validate a unit of land under this section if the unit of land was unlawfully created on or after January 1, 2007.
- (7) Development or improvement of a parcel created under subsection (5) of this section must comply with the applicable laws in effect when a complete application for the development or improvement is submitted as described in ORS 215.427 (3)(a) or 227.178 (3)(a).

Recommended revised LC 13.020

13.020 Validation of a Unit of Land.

- (1) An application to validate a unit of land that was created by a sale that did not comply with the applicable criteria for creation of a unit of land may be submitted and reviewed pursuant to LC 14.050 if the unit of land:
 - (a) Is not a lawfully established unit of land; and
 - (b) Could have complied with the applicable criteria for the creation of a lawfully established unit of land in effect when the unit of land was sold.
- (2) Notwithstanding subsection (1)(b) of this section, an application to validate a unit of land under this section may be submitted and reviewed if the county approved a permit, as defined in ORS 215.402, for the construction or placement of a dwelling or other building on the unit of land after the sale. If the permit was approved for a dwelling, the county must determine that the dwelling qualifies for replacement under the criteria set forth in ORS 215.755 (1)(a) to (e).
- (3) An application for a permit as defined in ORS 215.402 or a permit under the applicable state or local building code for the continued use of a dwelling or other building on a unit of land that was not lawfully established may be submitted and reviewed if:
 - (a) The dwelling or other building was lawfully established prior to January 1, 2007; and
 - (b) The permit does not change or intensify the use of the dwelling or other building.
- (4) An application to validate a unit of land under this section is an application for a permit, as defined in ORS 215.402. An application under this section is not subject to the minimum lot or parcel sizes established by Lane Code Chapters 10 or 16.
- (5) A unit of land becomes a lawfully established parcel when the county validates the unit of land under this section if the owner of the unit of land records a partition plat within 90 days of validation.
- (6) An application to validate a unit of land under this section may not be approved if the unit of land was unlawfully created on or after January 1, 2007.
- (7) Development or improvement of a parcel created under subsection (5) of this section must comply with the applicable laws in effect when a complete application for the development or improvement is submitted as described in ORS 215.427 (3)(a).

3. HOUSEKEEPING AND CONFORMING AMENDMENTS TO LC 13.010 DEFINITIONS, CONSISTENT WITH HB 2723 AND HB 3629

Definitions and terminology in Lane Code need to be updated so as to be consistent with new state statutes.

ORS 92.010(3) as amended by HB 2723:

- (a) 'Lawfully established unit of land' means:
 - (A) A lot or parcel created pursuant to ORS 92.010 to 92.190; or
 - (B) Another unit of land created:
 - (i) In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations; or
 - (ii) By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations.
- (b) 'Lawfully established unit of land' does not mean a unit of land created solely to establish a separate tax account.

ORS 92.010 definitions as amended by HB 3629

- (7) 'Partition' means either an act of partitioning land or an area or tract of land partitioned.
- (8) 'Partition plat' includes a final map and other writing containing all the descriptions, locations, specifications, provisions and information concerning a partition.
- (9) 'Partitioning land' means dividing land to create not more than three parcels of land within a calendar year, but does not include:
 - (a) Dividing land as a result of a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots;
 - (b) Adjusting a property line as property line adjustment is defined in this section;
 - (c) Dividing land as a result of the recording of a subdivision or condominium plat;
 - (d) Selling or granting by a person to a public agency or public body property for state highway, county road, city street or other right of way purposes if the Road or right of way complies with the applicable comprehensive plan and ORS 215.213 (2)(p) to (r) and 215.283 (2)(q) to (s). However, any property divided by the sale or grant of property sold or granted for state highway, county road, city street or other right of way purposes shall continue to be considered a single unit of land until the property is further subdivided or partitioned; or
 - (e) Selling or granting by a public agency or public body of excess property resulting from the acquisition of land by the state, a political subdivision or special district for highways, county roads, city streets or other right of way purposes when the sale or grant is part of a property line adjustment incorporating the excess right of way into adjacent property. The property line adjustment shall be approved or disapproved by the applicable local government. If the property line adjustment is approved, it shall be recorded in the deed records of the county where the property is located.
- (12) "Property line adjustment" means relocation or elimination of all or a portion of the common property line between abutting properties that does not create an additional lot or parcel.

Recommended amendments to LC 13.010 definitions:

Legal Lot Lawfully Established Unit of Land. A lawfully created lot or parcel.

- (1) A lot or parcel created pursuant to ORS 92.010 to 92.190; or
- (2) Another unit of land created:
 - (a) In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations; or
 - (b) By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations.
- (3) 'Lawfully established unit of land' does not mean a unit of land created solely to establish a separate tax account.
- (4) A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law.

~~Legal Lot Verification. A determination that a unit of land was created in conformance with the Lane Code and other applicable law. A preliminary determination shall only become final when it is made and noticed pursuant to LC 13.020.~~

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

- ~~(1) Major Partitions. A partition which includes the creation of a road.~~
- ~~(2) Minor partitions. A partition that does not include the creation of any road.~~

~~Plat Partition Partition Plat. A final diagram and other documents relating to a major or minor partition. Includes a final map and other writing containing all the descriptions, locations, specifications, provisions and information concerning a partition.~~

Partitioning Land. ~~Dividing land into two or~~ to create not more than three parcels of land within a calendar year, but does not include:

- ~~(1) A division of land resulting from~~ Dividing land as a result of a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots, ~~or lots;~~
- ~~(2) An adjustment of a property line by the relocation of a common boundary where and additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with the applicable zoning ordinance, or~~ Adjusting a property line as property line adjustment is defined in Lane Code 13.450;
- ~~(3) Dividing land as a result of the recording of a subdivision or condominium plat;~~
- ~~(4) Selling or granting~~ A sale or grant by a person to a public agency or public body property for state highway, County road, city street or other right of way purposes ~~provided that such if such~~ the Road or right of way complies with the applicable Lane County Rural Comprehensive Plan and ORS 215.213 (2)(e p) to (s r) and 215.283 (2)(p q) to (r s). However, any sold or granted for state highway, county road, city street or other right of way purposes shall continue to be considered a single unit of land until the property is further subdivided or partitioned; or
- ~~(5) Selling or granting~~ by a public agency or public body of excess property resulting from the acquisition of land by the state, a political subdivision or special district for highways, county roads, city streets or other right of way purposes when the sale or grant is part of a property

line adjustment incorporating the excess right of way into adjacent property. The property line adjustment shall be approved or disapproved by the Planning Director. If the property line adjustment is approved, it shall be recorded in the deed records of the county where the property is located.

Property line adjustment. The A relocation or elimination of a all or a portion of the common property line between two abutting properties that does not create an additional lot or parcel.

CONCLUSION

We believe the amendments proposed would ensure that Lane County local regulations achieve compliance with state laws and would resolve issues of contention in the pending LUBA appeal of the legal lot verification provisions, as well as provide more certainty for local landowners and others involved in real estate transactions within Lane County.