

33.2 Land Divisions - Partitions. Under ORS 215.010(1), when the word “parcel” is used in ORS chapter 215, the parcel must be a lawfully created parcel, in the sense that the parcel’s date of creation either predated any applicable laws governing partitions or the parcel was created in compliance with those laws. *Reeves v. Yamhill County*, 53 Or LUBA 4 (2006).

33.2 Land Divisions - Partitions. When the definitions of the relevant terms set out in ORS chapter 92 are read together, whether a division of land creates “parcels” or “lots” depends the number units of land that one or more divisions of land in a single year produce. If the division or divisions produce four or more units of land, they are lots; if they produce three or fewer, they are parcels. *Reeves v. Yamhill County*, 53 Or LUBA 4 (2006).

33.2 Land Divisions - Partitions. Applying the contextual analysis that is required by *Maxwell v. Lane County*, 178 Or App 210, 35 P3d 1128 (2001), *adhered to as modified* 179 Or App 409, 40 P3d 532 (2002), even though ORS 215.750(1) does not expressly state that the references in that statute to “lots” are limited to lawfully created lots, and even though the relevant definitions in ORS 92.010 do not expressly require that a lot must be a lawfully created lot, if those statutes are read in context with ORS 92.012, 92.018(1), 92.025(1) and ORS 215.010(1)(a), it is sufficiently clear that when the legislature used the term “lot” in ORS 215.750(1) it did not mean to include unlawfully created lots. *Reeves v. Yamhill County*, 53 Or LUBA 4 (2006).

33.2 Land Divisions - Partitions. County authority to approve forest template dwellings derives from ORS 215.750(1). In exercising the authority granted by ORS 215.750(1), a county may not apply a county definition of “lot” to recognize lots that could not be recognized under ORS 215.750(1). The county may not set a lower standard for approving forest template dwellings under county legislation than the standard that is set by ORS 215.750. *Reeves v. Yamhill County*, 53 Or LUBA 4 (2006).

33.2 Land Divisions – Partitions. Even if a local government could recognize partial parcel annexations as sufficient to legally divide a parcel, where a local lot of record code definition does not recognize partial parcel annexation as sufficient to legally divide the annexed portion of a parcel from the portion of a parcel that is not annexed, the annexation does not have the effect of dividing the parcel. *Masson v. Multnomah County*, 48 Or LUBA 100 (2004).

33.2 Land Divisions – Partitions. The County Assessor’s assignment of a new tax lot number to the part of a 5.45-acre parcel that was annexed, while retaining the prior tax lot number for the part of the 5.45-parcel that was not annexed, is not sufficient to divide the 5.45-acre parcel into two different parcels. *Masson v. Multnomah County*, 48 Or LUBA 100 (2004).

33.2 Land Divisions – Partitions. Where 3.63 acres of a 5.45-acre parcel are located outside a city and are conveyed improperly by deed to a new owner, the original owner’s subsequent recording of a final plat for the 1.82 acres inside the city, which were retained

by the original owner, does not have the effect of legally creating a 3.63-acre parcel. *Masson v. Multnomah County*, 48 Or LUBA 100 (2004).

33.2 Land Divisions – Partitions. Absent some demonstration that recording a partition plat with the county clerk requires the application of statewide planning goals, comprehensive plan policies or implementing regulations, a county clerk’s act of recording a signed partition plat is not a land use decision or a limited land use decision. *Hammer v. Clackamas County*, 45 Or LUBA 32 (2003).

33.2 Land Divisions – Partitions. A city’s application of general land division standards to a proposed minor partition provides no basis for reversal or remand, where it is clear from the context of the provision that applications for minor partitions must satisfy more than just those requirements that apply to minor partitions alone. *Martin v. City of Dunes City*, 45 Or LUBA 458 (2003).

33.2 Land Divisions – Partitions. An earlier city decision that permitted access from a two-acre parcel via a 20-foot wide easement does not bar the city from requiring a 50-foot wide easement for two parcels subsequently created from that two-acre parcel. *Martin v. City of Dunes City*, 45 Or LUBA 458 (2003).

33.2 Land Divisions – Partitions. A city approval of a partition that creates three parcels does not constitute a “contract” that is breached when the city requires that additional access be provided for parcels created from one of those three parcels. *Martin v. City of Dunes City*, 45 Or LUBA 458 (2003).

33.2 Land Divisions – Partitions. A local ordinance that requires an applicant for a partition to improve the entire 3,500-foot length of a private road providing access to the property, including widening existing easements across private property and improving the road to full county road standards, is a possessory exaction requiring off-site improvements and is therefore subject to the “rough proportionality” requirement of *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994). *Dudek v. Umatilla County*, 42 Or LUBA 427.

33.2 Land Divisions – Partitions. A city’s failure to respond to issues raised below regarding whether the “street frontage” of a flag lot is the same as its “front building line” provides no basis for remand, where it is clear under the city’s land division ordinance that “street frontage” and “front building line” are not the same. *Webb v. City of Bandon*, 39 Or LUBA 584 (2001).

33.2 Land Divisions – Partitions. An ambiguous assertion that a driveway providing access to a proposed flag lot does not qualify as a street is insufficient to raise an issue that the proposed minor partition creates a street and therefore must be approved as a major partition and comply with the criteria applicable to major partitions. *Webb v. City of Bandon*, 39 Or LUBA 584 (2001).

33.2 Land Divisions – Partitions. Only those impacts that reasonably flow from the approval granted may be considered when imposing exactions to ameliorate those impacts. *McClure v. City of Springfield*, 37 Or LUBA 759 (2000).

33.2 Land Divisions – Partitions. During its review of a proposed partition, a city may consider the impact that future dwellings may have on public infrastructure, where the partition approval is the last land use decision necessary to establish dwellings on the resulting parcels. *McClure v. City of Springfield*, 37 Or LUBA 759 (2000).

33.2 Land Divisions – Partitions. An ordinance allowing a county to revoke otherwise final and unreviewable partition approvals is a “retroactive ordinance” within the meaning of ORS 92.285. *Church v. Grant County*, 37 Or LUBA 646 (2000).

33.2 Land Divisions – Partitions. Before 1973, ORS 92.014 subjected the creation of streets or ways to county approval only when the street or way was created for the purpose of partitioning land. Creation of a 60-foot wide parcel to provide access across a parent parcel to a separate, pre-existing parcel in different ownership is not “for the purpose of partitioning land” and thus did not require county approval under ORS 92.014. *Tarjoto v. Lane County*, 36 Or LUBA 645 (1999).

33.2 Land Divisions – Partitions. Where a county approves an application that creates a new parcel, that approval is a partition as defined by ORS 92.010 notwithstanding that the county also approved a lot line adjustment involving the parent parcel in the same proceeding. *Hartmann v. Washington County*, 36 Or LUBA 442 (1999).

33.2 Land Divisions – Partitions. The legal effect of a “partition,” as defined at ORS 92.010, is to create new parcels as of the date the partition plat is approved. The parcels resulting from a partition are thus “created” as of the date the plat is approved, for purposes of the nonfarm dwelling provisions of OAR 660-033-0130 and ORS 215.284. *Hartmann v. Washington County*, 36 Or LUBA 442 (1999).

33.2 Land Divisions – Partitions. The definition of “Date of Creation” at OAR 660-033-0020(4) expands the circumstances in which parcels are “created” for purposes of siting a nonfarm dwelling to include lot line adjustments or similar reconfigurations that have the effect of qualifying the parcel for a dwelling. The definition does not impliedly narrow the set of circumstances that create a parcel to include only those events that have the effect of qualifying a parcel for a dwelling. *Hartmann v. Washington County*, 36 Or LUBA 442 (1999).

33.2 Land Divisions – Partitions. A partition, as defined by ORS 92.010, is not a “reconfiguration” of the boundaries of a parcel within the meaning of OAR 660-033-0020(4) because the legal effect of partition is to create new parcels. *Hartmann v. Washington County*, 36 Or LUBA 442 (1999).

33.2 Land Divisions – Partitions. Where a local land division ordinance mandates that the size of proposed parcels be greater than or equal to the size of the typical commercial agricultural enterprise in the area, a local government misconstrues that ordinance by

requiring only that the size of the proposed parcel be similar to the size of other parcels in the area. *Wood v. Crook County*, 36 Or LUBA 143 (1999).

33.2 Land Divisions – Partitions. Where an existing parcel is divided into three new parcels with one of the new parcels containing an existing house, the new parcel containing the house is not properly considered an existing parcel simply because it contains the existing house. *Sunningdale-Case Heights Assoc. v. Washington Co.*, 34 Or LUBA 549 (1998).

33.2 Land Divisions – Partitions. A property line adjustment is limited to relocation of common property lines. Where a decision reconfigures property lines so that entire parcels are moved and property lines that are not common are moved, the decision does not approve a property line adjustment. *Goddard v. Jackson County*, 34 Or LUBA 402 (1998).

33.2 Land Divisions – Partitions. A decision that relocates property lines that are not common to abutting properties reconfigures the property in a manner that violates the definition of "property line adjustment" at ORS 92.010(11) and the statutory distinction between a property line adjustment and replat, and such action is prohibited as a matter of law. *Goddard v. Jackson County*, 34 Or LUBA 402 (1998).

33.2 Land Divisions – Partitions. To establish implied acceptance of a road dedication: (1) the partition plat must include a dedication, and (2) parcels must have been sold with reference to the partition plat containing the dedication. Where petitioner fails to establish either the plat dedication or sales with reference to the partition plat dedication, there is no implied dedication. *Petersen v. Yamhill County*, 33 Or LUBA 584 (1997).

33.2 Land Divisions – Partitions. Where a hearings officer's interpretation that the county's street frontage requirement mandates street frontages be on a public road or street is contrary to the plain language of the county's zoning ordinance, a denial of a partition based solely on that interpretation will be reversed. *Miller v. Clackamas County*, 31 Or LUBA 104 (1996).

33.2 Land Divisions – Partitions. Where a county has never made a decision to partition a parcel, the county's approval of a lot line adjustment, which is premised on the assumption that a partition has occurred, must be reversed. *Higgins v. Marion County*, 30 Or LUBA 426 (1996).

33.2 Land Divisions – Partitions. Both the applicable county ordinance and ORS chapter 92 indicate reliance on plat recording as the event which establishes the finality and permanence of a land division. *Petree v. Marion County*, 29 Or LUBA 449 (1995).

33.2 Land Divisions – Partitions. Unless prohibited by a local ordinance, a property owner may apply for a second partition of land during the same calendar year as a first partition involving the same land is recorded. ORS chapter 92 is satisfied by a condition

delaying tentative approval of the second partition to the following calendar year. *Petree v. Marion County*, 29 Or LUBA 449 (1995).

33.2 Land Divisions – Partitions. ORS 215.428(3), which states that approval or denial of an application shall be based upon the standards and criteria that were applicable at the time the application was first submitted, does not require a local government processing a partition application to proceed as if factual circumstances existing at the time of application remain unchanged. *Petree v. Marion County*, 29 Or LUBA 449 (1995).

33.2 Land Divisions – Partitions. If a local government approves a proposed partition with conditions requiring exactions, the local government must ensure that the requirement of *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 2319-20, 129 L Ed2d 304 (1994) for "individualized determination[s] that the required dedication is related both in nature and extent to the impact of the proposed development" is satisfied. *Neuman v. Benton County*, 29 Or LUBA 172 (1995).

33.2 Land Divisions – Partitions. Where the local code requires a local government to make a particular determination in acting on a partition application, the local government does not lack authority to make that determination. *Hilderbrand v. Marion County*, 28 Or LUBA 703 (1995).

33.2 Land Divisions – Partitions. Identifying the area to be considered and the overall land use pattern of that area are prerequisites to determining whether a proposed partition satisfies a code requirement that it "not materially alter the stability of the land use pattern of the area." *McNamara v. Union County*, 28 Or LUBA 396 (1994).

33.2 Land Divisions – Partitions. A local government may not defer determinations of compliance with approval standards applicable to partition approval to the building permit approval stage. *Beck v. City of Happy Valley*, 27 Or LUBA 631 (1994).

33.2 Land Divisions – Partitions. Local government denial of proposed partitions because the ability of the school district to provide the level of school services required by certain plan policies has not been established does not constitute the imposition of a development moratorium prohibited by ORS 195.110(8). *Beck v. City of Happy Valley*, 27 Or LUBA 631 (1994).

33.2 Land Divisions – Partitions. Where an approval standard for partitioning timber zoned property into nonresource parcels requires that the subject property be "generally unsuitable land for the production of farm or forest products," and petitioner does not challenge a county determination that the subject property is generally suitable for *farm use*, that determination provides an independent basis for affirming the county's decision to deny the partition. *Newsome v. Clackamas County*, 27 Or LUBA 578 (1994).

33.2 Land Divisions – Partitions. ORS 215.263 authorizes counties to approve *partitions* creating new parcels for farm uses and nonfarm uses in EFU zones. However,

ORS 215.263 does not authorize *subdivision* of land zoned for exclusive farm use. *1000 Friends of Oregon v. Marion County*, 27 Or LUBA 303 (1994).

33.2 Land Divisions – Partitions. A condition of partition approval requiring consolidation of existing driveways into a single driveway to address comprehensive plan and local code policies concerning traffic safety is justified, even though the property is developed and new development is not proposed as part of the partition request, where the property could be developed more intensively in the future. *Kostenborder v. City of Salem*, 25 Or LUBA 440 (1993).

33.2 Land Divisions – Partitions. A condition of partition approval requiring that three existing driveways presently serving property to be partitioned be consolidated into a single driveway does not "take" a cognizable property interest, within the meaning of the Fifth Amendment to the U.S. Constitution or Article I, section 18, of the Oregon Constitution. Such a condition simply requires that a property owner exercise the property right of access differently. *Kostenborder v. City of Salem*, 25 Or LUBA 440 (1993).

33.2 Land Divisions – Partitions. Where there is a reasonable relationship between the development potential of a parcel to be divided and the impacts reasonably attributable to the divided parcel on the one hand, and the city's need to respond to legitimate traffic concerns on the other, and it would be more difficult to address such concerns when there are three parcels rather than a single parcel, notwithstanding the lack of current plans to develop the property further, a condition requiring consolidation of existing driveways is appropriate. *Kostenborder v. City of Salem*, 25 Or LUBA 440 (1993).

33.2 Land Divisions – Partitions. LUBA will not reverse or remand a local government decision refusing to issue a building permit for a structure to be placed on a parcel unlawfully divided, pursuant to a local code requirement that no building permit may be issued if the parcel of land on which a structure is to be placed or used is in violation of any local ordinance. *Woosley v. Marion County*, 24 Or LUBA 231 (1992).

33.2 Land Divisions – Partitions. Findings that a parcel is "an ideal size for a small roadside parcel" are inadequate to demonstrate compliance with a local code standard requiring that a parcel be no larger than necessary to accommodate the proposed use. *DLCD v. Curry County*, 24 Or LUBA 200 (1992).

33.2 Land Divisions – Partitions. A lot line adjustment is not a partition and cannot create additional units of land. ORS 92.015(7)(b). *McKay Creek Valley Assoc. v. Washington County*, 24 Or LUBA 187 (1992).

33.2 Land Divisions – Partitions. The text of ORS 92.017, and its legislative history, make it clear that the functions of ORS 92.017 are (1) to prevent local governments from refusing to recognize lawful divisions of land such that lots and parcels could not be sold to third parties, and (2) to establish that the property lines established by such land

divisions remain inviolate, absent the employment of a specific process to eliminate such property lines. *Kishpaugh v. Clackamas County*, 24 Or LUBA 164 (1992).

33.2 Land Divisions – Partitions. Nothing in either the text of ORS 92.017 or its legislative history suggests that all lawfully created lots and parcels must be recognized by local government as being separately developable. *Kishpaugh v. Clackamas County*, 24 Or LUBA 164 (1992).

33.2 Land Divisions – Partitions. Where county regulations establish different approval standards for major and minor partitions, a county's error in treating an application as being for a minor partition, rather than for a major partition, is not harmless. *Schrock Farms, Inc. v. Linn County*, 24 Or LUBA 58 (1992).

33.2 Land Divisions – Partitions. Where governing land use standards are not amended or modified, the circuit court, not LUBA, has jurisdiction to determine whether an urban subdivision or partition decision violates applicable approval standards. *Sully v. City of Ashland*, 20 Or LUBA 428 (1991).

33.2 Land Divisions – Partitions. While a decision to approve a zone change does not approve a "permit," within the meaning of ORS 227.160(2), a decision which approves both a variance and a minor partition does approve a "permit." *Harvard Medical Park, Ltd. v. City of Roseburg*, 19 Or LUBA 555 (1990).

33.2 Land Divisions – Partitions. A local government commits harmless error by mischaracterizing and reviewing a "major partition" as though it were a "subdivision," as those terms are defined in the city's code, where petitioner fails to identify any approval criteria which impose different standards on major partitions and subdivisions. *Vestibular Disorders Consult. v. City of Portland*, 19 Or LUBA 94 (1990).

33.2 Land Divisions – Partitions. A city may rely on ORS 92.090(3), which states that a subdivision or partition may not be approved unless streets are "dedicated without any reservation," to require immediate, rather than future, dedication of required rights of way. *Vestibular Disorders Consult. v. City of Portland*, 19 Or LUBA 94 (1990).

33.2 Land Divisions – Partitions. To demonstrate county denial of lot of record status exceeds the authority granted under ORS 92.017, petitioner must establish an alleged lot or parcel was lawfully created and, therefore, is within the scope of ORS 92.017. *Atkins v. Deschutes County*, 19 Or LUBA 84 (1990).

33.2 Land Divisions – Partitions. A county does not misapply its Lot of Record ordinance by failing to recognize units of land which (1) were not created under zoning regulations regulating partitions, (2) were not created pursuant to partition proceedings conducted under ORS Chapter 105, and (3) do not constitute a "partition" as that term is defined in ORS 92.010, as parcels created by partition. *Atkins v. Deschutes County*, 19 Or LUBA 84 (1990).