

1 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals a decision by the county approving a property line adjustment.

MOTION TO INTERVENE

The Crawford Family Trust, Fairview Associates, and John G. Crawford (intervenors) move to intervene on the side of the respondent. There is no opposition to the motion and it is granted.

FACTS

Intervenors applied for a property line adjustment to adjust the boundary between two properties. The first property, referred to by all parties as Tax Lot 2300, is a 15-acre lot that is located within Clymer Heights Subdivision. Clymer Heights Subdivision was created in 1953 when the plat was recorded in the county’s plat records. Petitioner owns property in the subdivision. The second property, referred to as Tax Lot 3600, is a 99.12-acre parcel located adjacent to the southern boundary of Tax Lot 2300, outside of Clymer Heights Subdivision. Intervenors submitted a property line adjustment application to alter the boundary between Tax Lot 2300 and Tax Lot 3600 to reduce Tax Lot 2300 from 15 acres to 1.7 acres and to increase Tax Lot 3600 from 99.12 acres to 111.90 acres. The county planning department approved the application, and petitioner appealed the decision to the hearings officer. The hearings officer approved the property line adjustment, and this appeal followed.

ASSIGNMENT OF ERROR

A. Introduction

In his assignment of error, we understand petitioner to argue that the hearings officer “[i]mproperly construed the applicable law” in approving the

1 property line adjustment because the application proposes a replat as defined in
2 ORS 92.010(13).¹ According to petitioner, a proposal to move the boundary
3 between a lot located within a platted subdivision and a parcel located entirely
4 outside of the platted subdivision is a replat as defined in ORS 92.010(13).
5 Petition for Review 15. Intervenors respond that the hearings officer correctly
6 concluded that adjusting the boundary of a lot platted as part of the subdivision
7 is not a replat, even if one of the adjusted parcels includes, after the adjustment
8 is completed, land both within and outside of the subdivision boundary as a
9 result.

10 **B. Applicable Law**

11 We set out the relevant statutory definitions, and a relevant definition
12 from the Jackson County Land Development Ordinance (LDO). First, ORS
13 92.010(12) defines “property line adjustment” as:

14 “[A] relocation or elimination of all or a portion of the common
15 property line between abutting properties that does not create an
16 additional lot or parcel.”

17 ORS 92.010(13) defines “replat” as:

18 “[T]he act of platting the lots, parcels and easements in a recorded
19 subdivision or partition plat to achieve a reconfiguration of the
20 existing subdivision or partition plat or to increase or decrease the
21 number of lots in the subdivision.”

22 ORS 92.185 provides:

23 “The act of replatting shall allow the reconfiguration of lots or
24 parcels and public easements within a recorded plat. Except as
25 provided in subsection (5) of this section * * * replats will act to

¹ LUBA is authorized to reverse or remand a decision that, as relevant here,
“[i]mproperly construed applicable law[.]” ORS 197.835(9)(a)(D).

1 vacate the platted lots or parcels and easements within the replat
2 area with the following conditions[.]”

3 And ORS 92.190(3) allows a county to use procedures other than replatting
4 procedures to adjust property lines, as long as those procedures include the
5 recording “of conveyances conforming to the approved property line
6 adjustment as surveyed in accordance with ORS 92.060(7).”²

7 Turning to the relevant provisions of the LDO, LDO 3.4.1 describes
8 “property line adjustments” as follows:

9 “Property line adjustments allow the relocation of all or a portion
10 of a common boundary line between abutting properties without
11 creating additional lots or parcels. Property line adjustments may
12 be permitted in any zoning district or across zoning districts, or
13 between subdivision lots. * * * * *”

14 LDO 13.3(211) defines a “replat” as:

15 “The act of platting lots, parcels and easements in a recorded
16 subdivision or partition plat to achieve a reconfiguration of the
17 existing subdivision or partition plat, or to increase or decrease the
18 number of lots or parcels. Neither a property line adjustment
19 between (2) lots on a recorded plat nor a partition of an existing

² ORS 92.190(3) provides:

“The governing body of a city or county may use procedures other than replatting procedures in ORS 92.180 and 92.185 to adjust property lines as described in ORS 92.010(12), as long as those procedures include the recording, with the county clerk, of conveyances conforming to the approved property line adjustment as surveyed in accordance with ORS 92.060(7).”

1 lot are replats. *See* PLAN, TENTATIVE (*See* ORS 92.010)[.]”
2 (Emphases in original.)³

3 **C. The Hearings Officer’s Decision**

4 The hearings officer approved the property line adjustment, concluding
5 that the common boundary of a lot that is located within a platted subdivision
6 and adjacent property that is located outside of the platted subdivision can be
7 relocated through a property line adjustment. The hearings officer concluded
8 that the express language of the definition of property line adjustment at ORS
9 92.010(12) does not require that the abutting property be located inside the
10 subdivision in order to complete a property line adjustment.

11 **D. Petitioner’s Arguments**

12 Petitioner first argues that the county unlawfully approved a replat
13 without following the statutory and local procedures that apply to a replat,
14 because the decision “reconfigur[es]” the subdivision within the meaning of
15 ORS 92.010(13). According to petitioner, moving the property line between
16 Tax Lot 2300 and Tax Lot 3600 “reconfigur[es]” the subdivision and therefore
17 is a replat.

18 The hearings officer’s decision accomplished one thing, and one thing
19 only: the relocation of a common boundary line between Tax Lot 2300 and
20 Tax Lot 3600. That limited action falls squarely within the definition of
21 “property line adjustment” at ORS 92.010(12), and therefore need not be
22 accomplished as a replat. We see nothing in the express language of ORS
23 92.010(13) that requires a replat, as defined in the statute or the LDO, in order

³ LDO 3.3.2(H)(3) provides in relevant part that “[a] replat will occur only as allowed under ORS 92.180 through 92.190. A property line adjustment between subdivision lots is not a replat.”

1 to relocate the boundary between Tax Lots 2300 and 3600.⁴ ORS 92.010(13)
2 defines a replat in relevant part as “the act of platting * * * to achieve a
3 reconfiguration of the existing subdivision or partition plat or to increase or
4 decrease the number of lots in the subdivision.” ORS 92.185 provides that
5 replats “act to vacate the platted lots or parcels and easements within the replat
6 area[.]” Thus a replat vacates one or more previously platted boundary lines of
7 lots within the subdivision, and creates new boundary lines and lots in their
8 place. In the circumstances here, there has been no “act of platting,” no
9 “reconfiguration of the existing subdivision,” and no “increase or decrease in
10 the number of lots in the subdivision” that could be accomplished only as a
11 replat. Instead, as explained below, there is only the movement of a single

⁴ *Howe v. Greenleaf*, 260 Or App 693, 320 P3d 641 (2014) provides some support for our holding. *Howe* involved a quiet title action to determine ownership of a vacated county road that ran along and formed the eastern and northern boundary of a platted subdivision. At the time the subdivision was platted and the road was created and dedicated, the subdivision declarant owned the platted property and also owned the property located to the east and north of the subdivision that was not included in the subdivision boundary. The county eventually vacated the road, and the owners of the property located outside of the subdivision but adjacent to the road sought to quiet title to one half of the road up to the center line of the road.

In holding that the owners of the adjacent property located outside of the subdivision owned one half of the road, the Court of Appeals rejected an argument that its holding would impermissibly replat the subdivision:

“Defendants do not cite to any authority supporting their argument, and we reject it. Plaintiffs’ ownership to the centerline of Skyland Drive does not change the subdivision boundaries. A person can legally own contiguous property located both within and without a subdivision boundary without having to apply to the county for a replat of the subdivision.” *Id.* at 706.

1 common boundary line between abutting properties, consistent with the
2 definition of a property line adjustment.

3 A “property line adjustment” as defined in ORS 92.010(12) allows “a
4 relocation or elimination of all or a portion of the property line between
5 abutting properties,” and the only limitation on the use of a property line
6 adjustment to achieve that relocation or elimination of a common boundary line
7 is that it “does not create an additional lot or parcel.” Moreover, ORS
8 92.190(3) allows the county to use a property line adjustment to adjust a
9 common boundary line between abutting properties within a platted
10 subdivision without the need for a replat, as long as the adjustment does not
11 create additional lots. If a property line adjustment can effect an adjustment of
12 a common lot line between two lots in a subdivision, we see no reason that the
13 same mechanism should not be used to adjust the common boundary of a lot
14 within a subdivision and a lot or parcel outside of the subdivision.

15 Petitioner next argues that the last sentence of the LDO definition of
16 “property line adjustment” at LDO 13.3(211), quoted above, limits the
17 availability of property line adjustments to an adjustment “between (2) lots on a
18 recorded plat[.]” However, we agree with intervenors that the sentence that
19 petitioner relies on is not a limitation on property line adjustments, but clarifies
20 that a property line adjustment, and not a replat, may be used to adjust the
21 boundary of two lots on a recorded plat. The LDO language that petitioner
22 cites merely reflects that reality.

23 The assignment of error is denied.

24 The county’s decision is affirmed.