

1 Opinion by Livingston.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a board of county commissioner's
4 decision approving a partition.

5 **MOTION TO INTERVENE**

6 Gene Oster, Wayne Wheat and Michael Day (intervenors)
7 move to intervene on the side of respondent. There is no
8 opposition to the motion, and it is allowed.

9 **FACTS**

10 This appeal concerns the timing of two partitions in
11 the county Acreage Residential zone. The first partition
12 divided a property into three parcels. The second
13 partition, approval of which petitioner appeals, divides one
14 of the parcels created by the first partition into three
15 parcels.

16 The first partition application was filed August 4,
17 1993, became complete August 9, 1993, and was approved
18 September 30, 1993. The first partition plat was given
19 final approval October 10, 1993, and was recorded January
20 19, 1994.

21 The second partition application was filed March 1,
22 1994, became complete March 3, 1994, and was ultimately
23 approved by the hearings officer on November 16, 1994,
24 subject to the condition that the recording of the plat be
25 delayed to calendar year 1995. Petitioner appealed the
26 decision of the hearings officer to the board of

1 commissioners. On January 5, 1995, the board of
2 commissioners upheld the hearings officer's decision. This
3 appeal to LUBA followed.

4 **FIRST ASSIGNMENT OF ERROR**

5 Petitioner contends the county should have treated the
6 two partitions as one subdivision. Petitioner relies on the
7 definitions of "partition land" and "subdivide land" in the
8 Marion County Subdivision and Partitioning Ordinance
9 (MCSPPO).¹ Petitioner argues that because the application
10 for a second partition was filed within one calendar year of
11 the date the first partition plat was recorded, more than
12 three parcels were created within one calendar year.
13 According to petitioner, the condition of approval that
14 requires a delay until the next calendar year before
15 recording the second partition plat does not prevent a
16 violation of the ordinance.

¹Like ORS 92.010(7) and (8), the MCSPPO distinguishes between partitioning and subdividing land. The MCSPPO defines "partition land" as:

"To divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year, or to adjust a lot line by relocation of a common boundary. Partition land does not include division of land resulting from the creation of cemetery lots or lien foreclosures."

The MCSPPO defines "subdivide land" as:

"* * * to divide an area or tract of land into four or more lots within a calendar year when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of such year."

1 The decisive issue is when a land division actually
2 occurs. Both the county and intervenors argue it is when a
3 plat is recorded, and we agree. MCSP0 section VII, 11
4 provides, in relevant part:

5 "Within one year of approval of the partitioning
6 application, the applicant shall submit for
7 approval by the [planning] Director, a
8 partitioning map in the appropriate form which
9 shall reflect the final decision. When so
10 approved, said map shall be recorded with the
11 Marion County Clerk. Until it is so approved and
12 recorded, no building permits for any of the
13 divided parcels shall be issued. Should the
14 applicant fail to record a partitioning map within
15 one year the approval shall be deemed null and
16 void. * * *"

17 The county ordinance is an elaboration on the
18 procedures outlined in ORS chapter 92. ORS 92.025(1) and
19 (2) provide that until a partition plat is acknowledged and
20 recorded, no interest in any parcel created by the partition
21 may be sold. ORS 92.040 provides that approval of a
22 tentative plan for a partition does not constitute approval
23 of the final partition plat for recording. Both the county
24 ordinance and ORS chapter 92 clearly indicate reliance on
25 plat recording as the event which establishes the finality
26 and permanence of the land division.

27 Nothing in the statute or county ordinance prohibits a
28 property owner from applying for a second partition during
29 the same calendar year as a first partition is recorded. In
30 this case, since a partition is not final until it is
31 recorded, the first partition became final on January 19,

1 1994. The second partition still is not final.
2 Conditioning tentative approval of the second partition on a
3 delay in recording the plat to the following calendar year
4 satisfies ORS chapter 92 and the MCSPO.

5 The first assignment of error is denied.

6 **SECOND ASSIGNMENT OF ERROR**

7 Petitioner contends the county's findings violate
8 ORS 215.428(3), which states:

9 "If the application was complete when first
10 submitted or the applicant submits the requested
11 additional information within 180 days of the date
12 the application was first submitted and the county
13 has a comprehensive plan and land use regulations
14 acknowledged under ORS 197.251, approval or denial
15 of the application shall be based upon the
16 standards and criteria that were applicable at the
17 time the application was first submitted."

18 Petitioner asserts that conditioning tentative approval
19 of the second partition on a delay to the next calendar year
20 in recording the second partition plat is essentially a
21 ruse. Petitioner argues this allows the county to adopt
22 different approval standards, in violation of ORS
23 215.428(3), after the second partition application is filed.
24 According to petitioner, because the application for a
25 second partition is made in the same year as the first
26 partition becomes final, the appropriate approval standards
27 are those for a subdivision.

28 ORS 215.428(3) applies when approval standards and
29 criteria are amended after an application is filed and
30 before the local government takes final action. Petitioner

1 does not contend this has occurred. Petitioner argues that
2 regardless of what happens during the course of the
3 application, the local government must proceed as if
4 circumstances existing at the time of application remain
5 unchanged. However, ORS 215.428(3) applies only to changes
6 in approval standards and criteria, not to changes in
7 factual circumstances. ORS 215.428(3) is inapplicable to
8 the county's condition that recording the plat of the second
9 partition be deferred to the next calendar year.

10 The second assignment of error is denied.

11 The county's decision is affirmed.