

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the city's sale of a portion of a
4 city-owned tax lot (LUBA No. 96-011) and the city's approval
5 of a minor partition (LUBA No. 96-022).

6 **MOTION TO FILE REPLY BRIEF**

7 Petitioner moves to file a reply brief. A reply brief
8 accompanies the motion. As stated in petitioner's motion,
9 the purpose of the reply brief is "to address new case
10 authority and arguments presented by respondent in its
11 brief." However, the reply brief merely responds to
12 arguments and cases discussed in the response brief. It
13 does not address any new issues presented in that brief.
14 Petitioner's motion to file a reply brief is denied.

15 **FACTS**

16 These consolidated appeals stem from the city's sale of
17 a city-owned tax lot (tax lot 1500) to an adjacent property
18 owner (the applicant), which facilitated a minor partition
19 of the applicant's property (tax lot 1300). Petitioner
20 challenges both the sale of tax lot 1500, and the subsequent
21 partition.

22 On December 8, 1995, the applicant requested approval
23 from the city for a minor partition of tax lot 1300 into two
24 parcels. Although the overall lot-size was sufficient to
25 justify the partition, the property was not wide enough to
26 create two lots, each with the minimum required 75-foot

1 width. Initially, the applicant requested a variance, to
2 allow the lots to be only 72 feet wide. The variance
3 request was withdrawn, however, when the city agreed to sell
4 to the applicant a portion of tax lot 1500, a 15-foot-wide
5 parcel that resembles an alleyway, abutting the applicant's
6 property.

7 A portion of tax lot 1500 also abuts petitioner's
8 property.¹ Petitioner has apparently used tax lot 1500 to
9 access the back of her property, though the extent and
10 nature of her use is unclear. Tax lot 1500 is not a public
11 right-of-way. In a "[r]equest for disposal of city
12 property," the assistant city engineer described tax lot
13 1500 as follows:

14 "On January 10, 1966, the city accepted a deed for
15 a number of narrow interconnected parcels of land
16 * * *. The parcels of land have the appearance of
17 alleys. However, the deed has the unusual
18 stipulation that the deeded property be used for
19 utility services. The assessor's records show
20 that fee title for this parcel of land is in the
21 name of the City and, in fact, a tax lot number
22 has been assigned which differentiates this
23 property from normal rights of ways. As the owner
24 of this property [the city is] called upon to
25 maintain these strips, basically by cutting grass
26 and brush growth. The property is not open for
27 vehicular travel and could probably never be used
28 as such due to the steep grade and narrow ways."
29 Record 17.

30 The sale of a portion of tax lot 1500 from the city to

¹Tax lot 1500 is L-shaped. The applicant purchased a portion of tax lot 1500 to the side of her property. The other portion of the "L" separates the applicant's from petitioner's property at the rear of both properties.

1 the applicant was completed on December 19, 1995, when the
2 city council authorized the sale at its regular business
3 meeting. The city sold the property for \$250.00, and
4 reserved an easement for continued use of the property for
5 public facilities and pedestrian access.²

6 On December 20, 1995, the city planning commission
7 issued preliminary approval of the applicant's partition
8 request and sent notice to surrounding property owners and
9 residents. The notice explained the right to request a
10 hearing on the application before the planning commission
11 and specified that requests for hearing were due no later
12 than January 2, 1996, with final action to be taken on
13 January 9, 1996. The notice lists the address of the
14 affected property, but described the request as involving
15 only tax lot 1300. A map included with the notice depicts
16 tax lot 1300 as being the property subject to the partition.
17 The notice does not specify that a portion of tax lot 1500
18 is included in the property to be partitioned.

19 At some point after January 2, 1996, petitioner learned
20 that the partition of the applicant's property was
21 facilitated by the city's sale of a portion of tax lot 1500
22 to the applicant. On January 8, 1996, through counsel she
23 filed a written request for hearing on the partition

²The city council minutes describe the city's action as "Authorization for Mayor and Recorder to sign bargain and sale agreement for city-owned property on Terrace Street." Record 6.

1 application. At its January 9, 1996 meeting, the planning
2 commission denied the request as being untimely filed. The
3 planning commission then finally approved the partition. A
4 condition of approval require that the affected portion of
5 tax lot 1500 be merged into tax lot 1300 before the
6 partition is recorded.

7 These appeals followed.

8 **JURISDICTION**

9 **A. 96-011**

10 The city contends the city's sale of a portion of tax
11 lot 1500 is not a land use decision over which we have
12 jurisdiction.

13 Petitioner argues the sale is a land use decision both
14 because (1) the sale will have a significant impact on
15 present or future land uses in the area; and (2) the
16 transfer resulted in a de facto partition of tax lot 1500
17 since only a portion of that lot was conveyed.

18 At oral argument petitioner's attorney acknowledged
19 that conveyances of real property are not land use decisions
20 but argued nonetheless that in this case, the conveyance is
21 a significant impact land use decision because of its
22 relationship to the partition which it facilitated.
23 Petitioner also argues that because of petitioner's use of
24 tax lot 1500 to access the back of her property, this sale
25 should be treated as a street vacation rather than as a
26 sale.

1 In Harding v. Clackamas County, 89 Or App 386, 750 P2d
2 167 (1988), the Court of Appeals determined that a street
3 vacation constituted a significant impact land use decision
4 because vacation of "this improved right of way alters the
5 existing traffic pattern of nearby property owners having a
6 right of access to the street." Id. at 387. In contrast,
7 the city's sale of a portion of tax lot 1500 does not
8 involve any public right-of-way. Petitioner has not
9 established a right of access to tax lot 1500. Thus, its
10 sale will not alter any existing traffic patterns to which
11 petitioner has access rights. The fact that petitioner may
12 have used a portion of the tax lot for some type of access
13 to the rear portion of her property does not change the
14 legal character of the property so that it requires a street
15 vacation.

16 The fact that the sale of tax lot 1500 facilitated a
17 subsequent partition of the applicant's property also does
18 not transform the conveyance into a significant impact land
19 use decision. The city's sale of the property does not have
20 an actual impact on land use and is not in itself a land use
21 action. See Lane v. City of Prineville, 49 Or App 390
22 (1980); Hemstreet v. Seaside Improvement Comm., 16 Or LUBA
23 630 (1988). That the subsequent partition has an impact on
24 land use does not change the character or impact of the sale
25 itself.

26 Neither is the sale of tax lot 1500 a statutory land

1 use decision. In the petition for review, petitioner argued
2 the sale is a land use decision because it constitutes a "de
3 facto partition" of Tax Lot 1500. At oral argument
4 petitioner acknowledged that the sale was not a "de facto
5 partition," but argued instead that it was a "de facto lot
6 line adjustment." The city agrees the sale of a portion of
7 tax lot 1500 requires a lot line adjustment, but argues that
8 under the city's code, a lot line adjustment is a
9 ministerial action, which is exempt from being a land use
10 decision.³

11 Petitioner did not challenge the city's sale as being a
12 lot line adjustment, and there is no evidence in the record
13 as to whether the city processed a lot line adjustment in
14 conjunction with the sale of a portion of tax lot 1500.
15 Nonetheless, the city's requirement to adjust the lot line
16 between the city's and the applicant's property does not
17 make the sale of real property itself a lot line adjustment
18 over which we have jurisdiction.⁴

³In the city's response brief, the city attorney also incorrectly states that the sale of tax lot 1500 is a lot line adjustment under the city's code. Nothing in the city's code makes a sale of property the equivalent of a lot line adjustment. Nor do the minutes of the city council meeting at which the sale was authorized indicate that the city council considered or approved a lot line adjustment in conjunction with the sale.

⁴There is no lot line adjustment before us in this review. Therefore, we make no determination on the correctness of the city's characterization of its lot line adjustment process as being "ministerial" and therefore exempt from review as a land use decision under ORS 197.015(10). We note, however, that a condition of approval of the minor partition requires that a "merger" of the transferred portion of tax lot 1500 into tax lot 1300 be

1 The city's sale of real property to the applicant is
2 neither a significant impact nor a statutory land use
3 decision. Therefore, we have no jurisdiction over this
4 appeal.

5 **Motion to Transfer to Circuit Court**

6 ORS 19.230(4) provides, in part:

7 "A notice of intent to appeal filed with the Land
8 Use Board of Appeals pursuant to ORS 197.830 and
9 requesting review of a decision of a municipal
10 corporation made in the transaction of municipal
11 corporation business that is not reviewable as a
12 land use decision as defined in ORS 197.0154(1)
13 shall be transferred to the circuit court and
14 treated as a petition for writ of review. * * *"

15 Petitioner filed a motion to transfer to circuit court,
16 requesting that this appeal be transferred to the Jackson
17 County Circuit Court in the event this Board determines the
18 challenged decision is not reviewable as a land use
19 decision. The city does not object to the motion.

20 The city's sale of a portion of tax lot 1500,
21 challenged in LUBA No. 96-011, is transferred to the Jackson
22 County Circuit Court.

23 **B. 96-022**

24 The city contends this Board has no jurisdiction to
25 hear petitioner's challenge to the city's minor partition
26 approval because the petitioner did not exhaust her local
27 administrative remedies. Specifically, the city asserts

completed prior to recordation of the partition. If it has not already
occurred, that merger would require completion of the lot line adjustment.

1 petitioner has no standing to contest the partition because
2 she failed to timely request a local hearing.⁵

3 Petitioner acknowledges she did not appeal the city's
4 tentative partition approval within the time stated in the
5 city's notice. She argues, however, that she was excused
6 from adhering to the city's deadline because the city's
7 notice of approval did not adequately identify the nature of
8 the request by failing to include any reference that a
9 portion of tax lot 1500 was included in the partition
10 request.

11 ORS 197.763(3)(c) and Ashland Land Development
12 Ordinance (LDO) 13.108.080 require that public notice of
13 land use actions must include "the street address or other
14 easily understood geographical reference to the subject
15 property." Neither the statute nor the ordinance require
16 that the city specify the tax lot or lots affected by a
17 requested land use action. The notice provides a complete
18 street address, and illustrates the area subject to the
19 partition. That the city's notice did not specify that the
20 partition involved a portion of tax lot 1500 does not render
21 the notice inadequate under either ORS 197.763(3)(c) or LDO
22 18.108.080. Under the statutory and ordinance requirements,

⁵Although the city argues that petitioner lacks standing to appear before this Board, the city's basis is that she failed to exhaust her local remedies. Exhaustion of remedies is not a standing requirement, but rather a jurisdictional requirement. We treat the city's challenge as jurisdictional.

1 petitioner received adequate notice of the proposed
2 partition. See Kevedy v. City of Portland, 28 Or LUBA 227
3 (1994) (failure to clearly specify tax lots subject to
4 application for historic landmark designation in public
5 hearing notice does not render notice insufficient to
6 reasonably describe city's final action).

7 The notice required petitioner to request a hearing
8 before January 2, 1996. Petitioner did not timely request
9 such a hearing. Because petitioner failed to exhaust her
10 local remedies, we have no jurisdiction to consider
11 petitioner's appeal.

12 LUBA No. 96-022 is dismissed.