

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 LANDWATCH LANE COUNTY,
5 *Petitioner,*

6
7 vs.

8
9 LANE COUNTY,
10 *Respondent,*

11
12 and

13
14 ALISON FARVER and CHARLES FARVER,
15 *Intervenors-Respondents.*

16
17 LUBA No. 2016-124

18
19 FINAL OPINION
20 AND ORDER

21
22 Appeal from Lane County.

23
24 Sean T. Malone, Eugene, filed the petition for review and argued on
25 behalf of petitioner.

26
27 No appearance by Lane County

28
29 Bill Kloos, Eugene, filed the response brief and argued on behalf of
30 intervenors-respondents. With him on the brief was the Law Office of Bill
31 Kloos, PC.

32
33 BASSHAM, Board Member; HOLSTUN, Board Chair; RYAN, Board
34 Member, participated in the decision.

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36 AFFIRMED

06/29/2017

1 You are entitled to judicial review of this Order. Judicial review is
2 governed by the provisions of ORS 197.850.

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NATURE OF THE DECISION

Petitioner appeals a county board of commissioners’ order affirming and adopting a hearings official decision that verified four parcels as legal lots.

FACTS

This appeal concerns the legal significance of a 1985 quitclaim deed which conveys the western half of a dry “meander channel” of the Willamette River to the adjacent property owners, intervenors-respondents’ (intervenors’) predecessors-in-interest.¹ The State’s title in the submersible and submerged lands of the Willamette River vested at the time Oregon was admitted to the Union in 1859.

Intervenors own four parcels in the vicinity of the meander channel. On July 18, 2016, intervenors applied to the county to verify the four parcels as legal lots, pursuant to Lane County Code (“LC”) 13.020.² On September 7, 2016, the county planning director approved the application.

On September 21, 2016, petitioner filed a timely appeal of the planning director’s decision. On October 20, 2016, the county hearings official

¹ The technical term for dry land that is formed by the withdrawal of water from a river or the sea is “reliction.”

² LC 13.020, Legal Lot Verification, authorizes the county to make:
“A determination that a unit of land was created in conformance with the Lane Code and other applicable law***.”

1 conducted a public hearing on the appeal. Four days later, October 24, 2016,
2 the hearings official issued a decision approving the application.

3 Only two of the four parcels that the hearings official verified are
4 disputed in this appeal: what are referred to in the decision as Lots 1 and 3.³
5 Lots 1 and 3 are illustrated in Figures 2-4, included as an appendix at the end of
6 this opinion.⁴ Lots 1 and 3 were originally part of a single parcel created in the
7 1800s, the Zumwalt Lot in Figure 1. In 1889, Lot 1 was divided from Lot 3,
8 when Hayes road was deeded in fee to the county (a configuration depicted in
9 Figure 2). The Hayes road dedication also divided the meander channel in state
10 ownership, creating a small parcel designated as “M1” on Figure 2.

11 In 1985, the state quitclaimed its interest in the western portion of the
12 meander channel to the Zumwalts, intervenors’ predecessors-in-interest, the

³ Lots 2 and 4 lie south of Lots 1 and 3. Because the verification of Lots 2 and 4 is not challenged in this appeal, we do not describe Lots 2 and 4.

⁴ Figures 1 – 4 are very simplified schemas of the units of land at issue in this appeal, to illustrate the key historical events and the parties’ different understandings of the current configuration of the properties. Lots 1 and 3 are two parcels currently owned by intervenors that historically adjoined the meander channel to the west (designated as M in Figure 1) prior to the 1985 quitclaim deed. The property designated as E is a parcel that adjoined the meander channel to the east prior to the 1985 quitclaim deed. Figure 2 illustrates the effect of the road across Lot 3 and the Meander channel, which was deeded in fee to the county in 1889. Figure 3 illustrates the configuration after the 1985 quitclaim deed, pursuant to the hearings official. Figure 4 illustrates what we understand petitioner to contend the configuration to be after 1985.

1 owners of the adjacent parcels to the west of the meander, Lots 1 and 3.
2 Following the 1985 quitclaim deed, the county tax assessor assigned a separate
3 tax lot number, tax lot 2201, to the area of land quitclaimed to the Zumwalts.
4 On Figure 4, tax lot 2201 encompasses the area labeled “X” and “Y.”
5 Apparently, at the same time as the state transferred ownership of the western
6 half of the meander channel to the Zumwalts, the state also quitclaimed the
7 eastern portion of the meander channel to the adjoining owners to the east. The
8 tax assessor assigned the area quitclaimed to the owner to the east the tax lot
9 number tax lot 2202. On Figure 4, tax lot 2202 encompasses the area
10 designated as “E2” and “E3.” The net effect of the two quitclaim deeds was to
11 eliminate state ownership of most of the meander channel.

12 The hearings official found, and petitioner does not dispute, that Lots 1
13 and 3 were lawfully created in the 19th century and qualify as legal lots, at least
14 as they were configured prior to 1985. As explained below, the dispute is over
15 whether Lots 1 and 3 include the western portion of the meander channel that
16 the state quitclaimed in 1985 to the Zumwalts, and, if so, whether Lots 1 and 3,
17 as expanded in 1985, continue to qualify as legal lots.

18 The hearings official concluded that the 1985 quitclaim deed had the
19 effect of expanding Lots 1 and 3 to include the adjoining western portion of the
20 meander channel, as a “*de facto*” property line adjustment.⁵ In other words,

⁵ We use quotes around *de facto* because that label suggests that in 1985 there was a *de jure* county process for property line adjustments that was not

1 according to the hearings official the 1985 deed effectively expanded Lot 1 to
2 include the southern portion of tax lot 2201 (Y as depicted on Figure 4), and
3 expanded Lot 3 to include the northern portion of tax lot 2201 (X as depicted on
4 Figure 4). The hearings official’s decision states:

5 “The transfers of the meander property in 1985 [Figure 2, lots “M”
6 and “M1”] did not create new property but rather reduced an
7 existing parcel owned by the State to nothing [illustrated in Figure
8 3]. It is a common understanding that a property line adjustment
9 may move common property lines or eliminate them altogether.
10 The State’s transfer of the meander property to adjacent property
11 owners represented a *de facto* property line adjustment prior to the
12 time that there were any state or local regulations that required a
13 more formal procedure than a deed transaction and recordation.”
14 Record 16.

15 Petitioner appealed the hearings official’s decision to the county board of
16 commissioners, but requested that the commissioners not conduct a hearing on
17 the appeal, and instead deem the hearings official’s decision the final decision
18 of the county, pursuant to LC 14.515(3)(f)(ii).⁶ On December 6, 2016, the

undertaken. However, as we understand it, all parties agree that in 1985 in Lane County there was no county process required for accomplishing a property line adjustment between abutting property owners, other than by recording a deed, as was done in the present case.

⁶ LC 14.515(3)(f) requires that all appeals shall include an election between a:

- “(i) Request that the Board conduct a hearing on the appeal, or
- “(ii) Request that the Board not conduct a hearing on the appeal and deem the Hearings Official decision the final decision of the County. An appellant’s election under this section shall

1 board of county commissioners elected not to review or hear petitioner’s appeal
2 and entered an order affirming the decision of the hearings official, adopting the
3 hearings official’s decision and LC interpretations as its own, and adopting
4 additional findings. This appeal followed.

5 **FIRST ASSIGNMENT OF ERROR**

6 Petitioner argues the county misconstrued applicable law and issued
7 findings not supported by substantial evidence in verifying Lots 1 and 3 as legal
8 lots. Petitioner argues first that the hearings official erred in concluding that
9 Lots 1 and 3 were combined in a property line adjustment with the adjoining
10 portions of the meander channel represented by tax lot 2201. According to
11 petitioner, the 1985 quitclaim deed had the effect of creating two new parcels,
12 represented by X and Y on Figure 4, and later designated tax lot 2201.
13 However, petitioner contends that creation of the two new parcels by deed was
14 unlawful, because in 1985 county approval was required to create a parcel.
15 Further, petitioner argues that the two new parcels were unlawfully created
16 because the two alleged units of land represented by X and Y are smaller than
17 the minimum parcel size required in the county exclusive farm use (EFU) zone
18 that governs the area. Petitioner argues that because those two parcels were
19 created unlawfully, they cannot be verified as legal lots, or constitute part of a
20 legal lot.

constitute exhaustion of administrative remedies for
purposes of further appeal of the County’s final decision
* * *.”

1 Alternatively, we understand petitioner to argue that even if the hearings
2 official is correct that, in 1985, Lots 1 and 3 were expanded in a property line
3 adjustment to include the adjoining portions of the meander channel represented
4 by tax lot 2201, the hearings official erred in concluding that the eastern portion
5 of Lots 1 and 3 as expanded can be verified as part of legal Lots 1 and 3.
6 According to petitioner, expanding a legal lot to encompass an adjoining area of
7 land that is not itself a legal lot cannot extend “legality” to the adjoining area of
8 land, for purposes of LC 13.020. Petitioner contends that the only portions of
9 Lots 1 and 3 that can be verified as legal lots are the original areas of Lots 1 and
10 3 as they existed prior to the property line adjustment.

11 **A. First Sub-Assignment of Error**

12 As noted, the area of land quitclaimed to the Zumwalts in 1985 was later
13 designated tax lot 2201. Petitioner argued below that tax lot 2201 is not a legal
14 lot or parcel. The hearings official responded to that argument as follows:

15 “[The applicants have] not claimed tax 2201 is a legal lot and the
16 legal lot status of this tax lot is not relevant to the legal status of
17 the [] legal lots subject to this application for legal lot verification.
18 *More to the point, tax lot 2201 was in existence when it was*
19 *transferred by quitclaim deed and subsequently assigned a tax*
20 *number. Tax lot 2201 was a meander channel of the Willamette*
21 *River that was subject to dereliction (loss of water). Because the*
22 *Willamette River is a navigable river its streambed, including its*
23 *meander channels, are and have been in State ownership since*
24 *1859.” Record 15 (emphasis added).*

25 On appeal, petitioner assigns error to the italicized sentence, arguing that
26 tax lot 2201 clearly was not “in existence” as a lawful unit of land in 1985 at the

1 time it was conveyed to the Zumwalts. Petitioner is, of course, correct that a
2 tax lot designation has no necessary relationship to the boundaries, or the
3 existence, of a discrete unit of land such as a lot or parcel. A tax lot designation
4 is solely for purposes of tax assessment, and it may encompass areas of land
5 larger or smaller than a lot or parcel. Prior to conveyance to the Zumwalts in
6 1985, the area of land later designated by the tax assessor as tax lot 2201 was
7 the western half of the state-owned meander channel, not a discrete unit of land
8 in itself.

9 However, the hearings official’s misstatement that tax lot 2201 was “in
10 existence” in 1985 does not provide a basis for reversal or remand. As the
11 remainder of the above-quoted finding demonstrates, the hearings official did
12 not intend to suggest that the area of land encompassed by tax lot 2201 existed
13 as a discrete unit of land prior to 1985 (or any other time). Instead, the hearings
14 official clearly meant that prior to 1985 the state-owned meander channel
15 existed as, or as part of, a discrete unit of land. We do not understand petitioner
16 to dispute that in 1985 the meander channel as a whole was a discrete unit of
17 land, or part of a discrete unit of land.

18 The first sub-assignment of error is denied.

19 **B. Second and Third Sub-Assignments of Error**

20 Under the second and third sub-assignments of error, petitioner argues
21 the county misconstrued applicable law and adopted findings not supported by
22 substantial evidence, in finding that the 1985 conveyance to the Zumwalts

1 effectuated a property line adjustment. The configuration verified by the
2 hearings official is illustrated in Figure 3. Petitioner argues that the legal effect
3 of the 1985 deed to the Zumwalts was to (illegally) create two new discrete
4 parcels. Petitioner’s theory is illustrated in Figure 4. In the alternative, we
5 understand petitioner to argue that, even if the 1985 deed effected a property
6 line adjustment, thus expanding the adjoining parcels to incorporate the western
7 half of the meander channel, as a matter of law the scope of the “legal lot” for
8 purposes of LC 13.020 cannot include the area of land added to a lawfully
9 created parcel under such a property line adjustment.

10 The hearings official found:

11 “The transfers of the meander property in 1985 did not create new
12 property but rather reduced an existing parcel owned by the State
13 to nothing. It is a common understanding that a property line
14 adjustment may move common property lines or eliminate them
15 altogether. The State’s transfer of the meander property to
16 adjacent property owners represented a *de facto* property line
17 adjustment prior to the time that there were any state or local
18 regulations that required a more formal procedure than a deed
19 transaction and recordation.” Record 16.

20 The county commissioners endorsed the hearings official’s view:

21 “[W]hen similar issues have been presented, the Land
22 Management Division has consistently found that conveyances
23 between adjacent ownerships, which do not have the effect of
24 creating new parcels, constitute *de facto* property line adjustments
25 when they occur prior to the time when there were any state or
26 local regulations that required a more formal procedure than a deed
27 transaction and recordation. The Hearings Official’s decision
28 supports this practice.” Record 5.

1 On appeal, petitioner does not dispute that in Lane County in 1985 a deed
2 transferring an area of land to an adjoining property owner was an effective
3 vehicle for accomplishing a property line adjustment. Petitioner’s main
4 argument is that as a matter of law the 1985 quitclaim deed created two new
5 parcels. Petitioner notes that a “property line adjustment” as defined in ORS
6 chapter 92 cannot create new lots or parcels.⁷ Petitioner reasons that because
7 the 1985 quitclaim deed created new parcels, it therefore cannot constitute a
8 property line adjustment.

9 However, petitioner identifies no authority for the proposition that, as a
10 matter of law, the 1985 quitclaim deed created new parcels. As noted,
11 petitioner does not dispute that in Lane County in 1985 a deed could function as
12 the vehicle to accomplish a property line adjustment, in the absence of any
13 required county process for approving a property line adjustment. As reflected
14 in the county’s findings, the county’s uniform practice has been to recognize
15 that deeds of this era, and of this kind, between adjoining property owners are
16 intended to accomplish a property line adjustment, rather than to (unlawfully)
17 create new parcels. Petitioner identifies no authority under county or state law

⁷ ORS 92.010(8) (1985) defined “partition” in relevant part to exclude “[a]n adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created[.]” The current statute includes a similar definition of “property line adjustment.” *See* ORS 92.010(12) (2015) (“[p]roperty line adjustment’ means a 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”).

1 that would preclude the county from reaching a similar conclusion in the
2 present case, for purposes of verifying Lots 1 and 3 as legal lots under LC
3 13.020. Absent a more developed argument, petitioner's arguments under these
4 sub-assignments of error do not provide a basis for reversal or remand.

5 The second and third sub-assignments of error are denied.

6 The county's decision is affirmed.

Fig. 1: Before Road

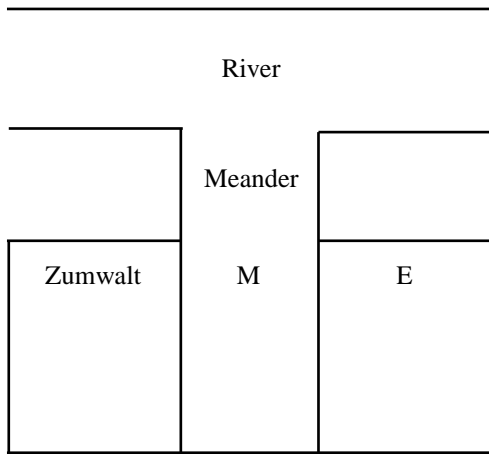


Fig. 2: After Road

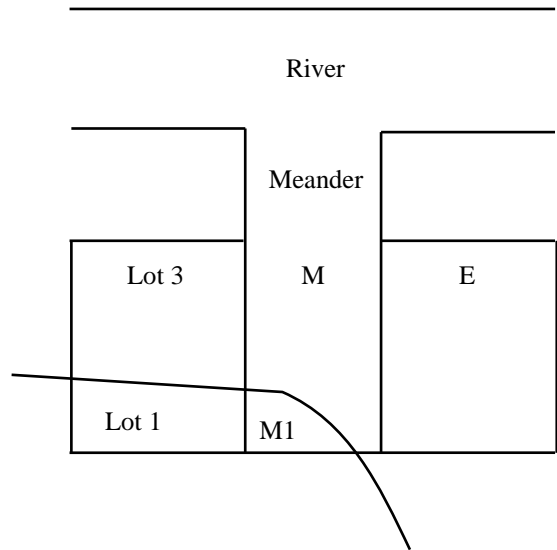


Fig. 3: After 1985, per HO

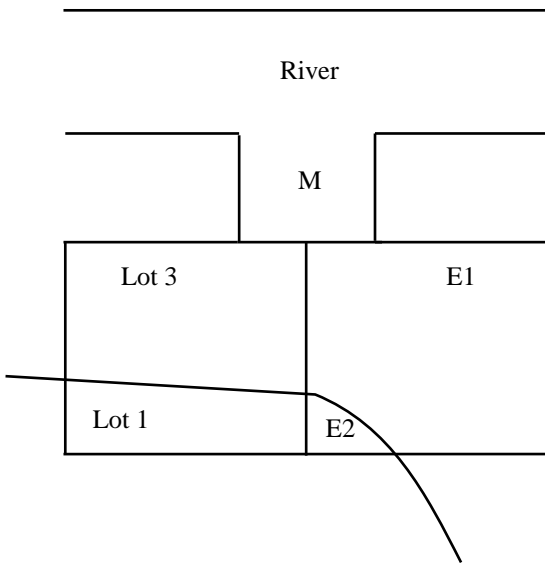


Fig. 4: After 1985, per Petitioner

