BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

PAUL PALASKE,
Petitioner,

vs.

CLACKAMAS COUNTY,
Respondent,

and

KEITH W. SHEPPARD,
Intervenor-Respondent.

LUBA No. 2002-060

FINAL OPINION
AND ORDER

Appeal from Clackamas County.

Jeffrey L. Kleinman, Portland, filed the petition for review and argued on behalf of petitioner.

No appearance by Clackamas County.

John T. Gibbon, Tigard, filed the response brief and argued on behalf of intervenor-respondent.

BRIGGS, Board Member; HOLSTUN, Board Chair; BASSHAM, Board Member, participated in the decision.

REMANDED 10/18/2002

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

Opinion by Briggs.

NATURE OF THE DECISION

Petitioner appeals a county decision concluding that intervenor-respondent's property is made up of two separately developable lots.

MOTION TO INTERVENE

Keith W. Sheppard (intervenor), the applicant below, moves to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

The property at issue in this appeal is part of Brentwood Heights, a 12-lot subdivision that was approved by the county in September 1973. At the time of subdivision approval, the property was zoned General Use (GU). Dwellings were permitted in the GU zone, provided the dwelling was sited on a lot or parcel containing at least one acre, and the site complied with all applicable regulations pertaining to the provision of domestic water and subsurface sewage disposal.

On November 26, 1973, the subdividers conveyed most of the property within the subdivision to Brentwood Heights Partners.[1] The November 1973 deed includes 16 separate property descriptions that reconfigure most of the lots in Brentwood Heights Subdivision.[2] In the November 1973 deed, Block 2, Lots 2 and 3 of the Brentwood Heights Subdivision were reconfigured into three lots and one twenty-foot access strip to another lot to the west. In the

[1] The deed that was recorded on November 27, 1973 (the November 1973 deed) is pivotal in this appeal. The parties and the county refer to a "December 1973" deed as the pertinent conveyance. The record contains a copy of a deed that was signed by the original subdividers on November 26, 1973, conveying the property as described in the briefs. That deed was recorded on November 27, 1973. Record 322, 329. We have not found a deed dated December 1973. Therefore, we assume that the references to the December 1973 deed actually refer to the November 1973 deed.

[2] The units of land that are created by a subdivision are "lots," while units of land created by a partition are "parcels." *See* ORS 92.010 (defining "lot" and "parcel"). The parties dispute whether the November 1973 deed resulted in replatted subdivision "lots," or whether the deed resulted in partitions of the approved lots creating new "parcels." For ease of reference, we call the resulting properties "lots."

years after the November 1973 conveyance, most of the lots were conveyed to individual property owners based on the descriptions provided in the November 1973 deed.

Intervenor's property consists of two of the three lots derived from Block 2, Lots 2 and 3. Those lots are referred to as tax lots 509 and 519. In 1977, tax lots 509 and 519 were conveyed in a single deed to the Doans, intervenor's predecessors in interest. There is one dwelling on tax lot 519, which was built in approximately 1978. In 1979, tax lots 509 and 519, were rezoned to Rural Residential Farm Forest, 5-acre minimum parcel size (RRFF-5).

On November 13, 1985, in response to a request by Doan, county planning staff determined that the subject property consisted of only one legal lot. The planning staff's decision states, in relevant part:

> "Tax lots 509 and 519, combined, form one legal lot. Although each lot has a separate tax lot number, this simply reflects the description of 2 parcels on a single deed." Record 333.

The Doans conveyed tax lots 509 and 519 in a single deed to intervenor in 1986. In March 2001, intervenor's agent filed a request to "confirm that [tax lot 509] is a buildable lot of record." Record 371. Planning staff reviewed intervenor's request as an interpretation of the Clackamas County Zoning and Development Ordinance (ZDO) definition of a "lot of record."[3] On May 18, 2001, the planning director issued a decision concluding that tax lots

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[3] ZDO 202 defines "lot of record" as:

> "A lot, parcel, other unit of land, or combination thereof, that conformed to all zoning and Subdivision Ordinance requirements and applicable Comprehensive Plan provisions, in effect on the date when a recorded separate deed or contract creating the lot, parcel or unit of land was signed by the parties to the deed or contract; except: * * *
>
> "a. Contiguous lots under the same ownership when initially zoned shall be combined when any of these lots, parcels or units of land did not satisfy the lot size requirements of the initial zoning district, excluding lots in a recorded plat.
>
> "b. A unit of land created solely to establish a separate tax account, or for mortgage purposes, that does not conform to all zoning and Subdivision Ordinance requirements and applicable Comprehensive Plan provisions, in effect on the date when a recorded separate deed, tax account or contract creating it was signed by the

509 and 519 are two separate lots of record. Notice of the planning director's May 18, 2001 decision was provided to only some of the persons entitled to notice under the ZDO. As a result, the planning director reissued the notice of decision to all persons entitled to notice of the decision on July 25, 2001.

The Far West Community Planning Organization (FWCPO) appealed the planning director's decision to the county hearings officer. The hearings officer sustained the appeal, overturning the planning director's decision and concluding that tax lots 509 and 519 are one legal lot. Intervenor appealed the hearings officer's decision to the board of county commissioners (BOC). The BOC overturned the hearings officer's decision, concluding that tax lots 509 and 519 are two legal lots. Petitioner, a neighboring property owner, filed the instant appeal to LUBA.

REQUEST TO TAKE OFFICIAL NOTICE

Intervenor requests that we take official notice of the county's 1955 Subdivision Ordinance. Petitioner does not object to the request and we agree with intervenor that the 1955 Ordinance is a document subject to official notice. *North Park Annex v. City of Independence*, 35 Or LUBA 827 (1998).

MOTION TO DISMISS

Intervenor moves to dismiss this appeal. According to intervenor, the BOC's decision was the result of an improper appeal filed by the FWCPO. According to intervenor, the FWCPO received notice of the May 18, 2001 planning director's decision and, because it had actual knowledge of the May 18, 2001 planning director's decision, it was not entitled to an extension of time for filing its appeal because of the faulty notice. Intervenor concedes that any person who did not receive notice of the May 18, 2001 decision is entitled to appeal the decision based on the corrected notice. Intervenor contends that petitioner's standing to

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parties to the deed or contract, unless it is sold under the foreclosure provisions of Chapter 88 of the Oregon Revised Statutes."

appeal to LUBA is based on petitioner's appearance during the FWCPO appeal, which intervenor contends the county should not have accepted. Intervenor argues that the proper disposition of this appeal is dismissal, because petitioner himself did not exhaust his local remedies by filing his own appeal of the planning director's decision.

Petitioner responds that the county concluded that the reissued notice had the effect of establishing a new deadline for filing a local appeal. Petitioner contends that it was therefore proper for the county to accept the FWCPO appeal, despite the fact that the FWCPO received two notices of the planning director's decision. Petitioner also argues that even if the county erred in allowing the local appeal, petitioner's appeal to LUBA is proper. While petitioner himself did not file the local appeals, petitioner argues that he appeared before the county during the FWCPO appeal proceedings that led to a final decision by the county. Petitioner argues that, pursuant to ORS 197.830(2), petitioner's participation during the proceedings below coupled with his filing of a notice of intent to appeal to LUBA within the time established by ORS 197.830(9), is sufficient to establish standing to appear before LUBA.

We reject intervenor's exhaustion argument. As we explained in *ONRC v. City of Oregon City*, 28 Or LUBA 263 (1994):

> "The purpose of the exhaustion requirement is to assure that the challenged decision is reviewed by the highest level local decision making body the local code makes available, before an appeal to this Board is pursued. * * * Here petitioners were the prevailing parties after the initial local decision on the application. A local appeal of that initial decision was filed by another party to the proceeding, and petitioners participated in the local appeal proceedings. Petitioners did not fail to exhaust available local administrative remedies simply because they did not file a separate local appeal * * *." 28 Or LUBA at 266 (citations omitted).

Here, intervenor does not argue that petitioner did not participate below. Rather, intervenor argues that, because the county may have erred in allowing the first local appeal by another party, petitioner may not file an appeal to LUBA because petitioner did not file a local appeal on his own behalf. For the same reason that we concluded the petitioners in

ONRC v. City of Oregon City exhausted their local remedies, we conclude that petitioner in this case exhausted local remedies. Accordingly, intervenor's motion to dismiss is denied.

BACKGROUND

Before we turn to the arguments in the petition for review, some explanation of the history of the county's land division regulations is in order. The county adopted a subdivision ordinance in 1955. That ordinance required that nonfarm land divisions that created four or more new lots had to be approved as a subdivision.[4] Subdivision required the recording of a subdivision plat, which was subject to review and approval by various county officials.[5]

In July 1973, the state legislature adopted legislation that required local governments to regulate land divisions. 1973 Or Laws ch. 696 (Chapter 696).[6] Chapter 696 expanded regulation of subdivisions, and included provisions pertaining to "major" and "minor" partitions.[7] That law became effective on October 23, 1973. In June 1974, the county

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[4] The 1955 Subdivision Ordinance defines "subdivision" as:

> "* * * [D]ivision of a lot, tract, or parcel of land or portion thereof, for other than agricultural purposes into four (4) or more lots, blocks, or tracts or other divisions of land, or containing a dedication of any part thereof as a public street for the purpose, immediate or future, [f]or the transfer of ownership or development. The term shall include resubdivision * * *." Section 2(R).

The ordinance does not define "parcel" or "tract" of land.

[5] The 1955 Subdivision Ordinance defines "plat" as:

> "Includ[ing] a final map, diagram, drawing, replat or other writing containing all the descriptions, locations, specifications, dedications, provisions and information concerning a subdivision." Section 2(H).

Section 4 sets out the "general principles of design" and includes a requirement that the lot size be large enough to meet zoning regulations and accommodate individual septic systems. Section 5 sets out the requirement for preliminary plats. Section 6 sets out the requirements for final plats.

[6] The parties dispute whether Chapter 696 applies to the November 1973 conveyance.

[7] "Major partitions" were defined as those land divisions that created two or three parcels within a calendar year and included the creation of a road or street. "Minor partitions" were defined as land divisions that created

adopted partition regulations, which required county review and approval, and recording of a partition map to partition land in the county. Intervenor-respondent's Brief, Appendix A.

At some point, the county adopted the lot of record definition in ZDO 202, recognizing that certain properties that were conveyed by separate deed would be considered to be separate lots or parcels. *See* n 3 (setting out lot of record definition). In addition, in 1978, the BOC adopted Order No. 78-1694, which ordered planning staff to recognize pre-existing lots of record in certain circumstances.[8]

ASSIGNMENT OF ERROR

The BOC decision challenged in this appeal concludes that the subject property contains two separately developable lots. The decision states three bases for the county's conclusion. First, the BOC substantially adopted the planning director's reasoning that the

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two or three parcels within a calendar year, but did not result in the creation of a new road or street. Those distinctions were eliminated in 1991. ORS 92.010(2) and (4) (1973), *repealed* 1991 Or Laws ch. 763.

[8] Order No. 78-1694 provides, in part:

> "This [BOC] finds as follows:
>
> "1. Great hardship has sometimes occurred resulting from the enforcement by the County of the old 1955 Subdivision Ordinance, inasmuch as the purchasers of those lots generally have been bona fide purchasers unaware of the old requirements and/or that the lots have not complied with the old regulations,
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> "2. A tremendous amount of staff time is and has been expended in an attempt to legalize those lots, and
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> "3. On balance, good planning is not promoted by such [a] time allocation of the Planning Department.
>
> "IT IS, THEREFORE, HEREBY ORDERED that the Planning staff may recognize in writing a lot created prior to August 27, 1974 as a pre-existing lot of record if the following conditions are met:
>
> "1. The present owner or purchaser of the lot is not the person who created the lot,
>
> "2. The present owner or purchaser of the lot purchased said lot in good faith believing that the lot was legal, and
>
> "3. The lot meets all other applicable regulations in effect at the time of creation." Record 8.

November 1973 deed effectively accomplished a replat or resubdivision of the Brentwood Heights Subdivision plat, and substantially conformed with the 1955 Subdivision Ordinance. Second, the BOC concluded that the November 1973 deed effected a series of partitions of the Brentwood Heights Subdivision lots and the resulting parcels were separately developable. Third, the BOC concluded that Order No. 78-1694 provided an overarching exception to compliance with any regulations that may have applied to the reconfiguration of the subdivision lots. Petitioner challenges all three bases for the BOC's conclusion that the subject property contains two separately developable lots of record.

A. BOC Conclusion 1 (1955 Subdivision Ordinance)

The planning director's decision that the BOC generally endorsed states, in relevant part:

> "The Planning Director, * * * finds that the [November 1973] conveyance * * * 'created' a re-plat of the plat of Brentwood Heights * * *. Although [the developers] did not record a new plat of this re-plat, the County has apparently recognized the re-plat as a legitimate re-division of the original plat by issuing building permits for homes on all but one [tax lot 509] of the resulting lots. As a matter of equity and fairness, the Planning Director * * * finds that the applicant has demonstrated that the re-plat created by [the November 1973 deed] complied with the relevant zoning classification at the time the re-division occurred, the General Use zoning district, by creating no lots less than one (1) acre in size, each of the lots was provided with adequate access to a public or private street, and consistent with other relevant dimensional and design criteria in effect at the time. *The re-plat was not done strictly in the manner required by the 1955 Subdivision Ordinance requirements in that a new plat was not recorded*, however, as stated previously, the County has recognized the re-plat in the years since by permitting development of all of the other re-divided lots. The Planning Director, by his designate, finds, therefore, that tax lot 509 is a separate Lot of Record and may be developed with a single-family dwelling provided septic feasibility is granted." Record 6. (Emphasis added.)

The pertinent portion of the BOC's decision states:

> "The July 25, 2001 [Planning Director] Notice of Decision * * * is a correct interpretation and application of the [ZDO], and is hereby adopted as findings and conclusions of this Board, with one exception. *The [BOC] does not agree that the [land reconfigurations made in the November 1973 deed were] 'not done strictly in the manner required by the 1955 County Subdivision*

> *Ordinance'; the [BOC] does not interpret this ordinance as necessarily requiring that a reconfiguration of subdivision lots such as was done in this case required at that time that a new plat be recorded*." Record 1. (Emphasis added.)

Petitioner argues that the BOC's "interpretation" that the November 1973 deed complied with the provisions of the 1955 Subdivision Ordinance is too conclusory for our review. According to petitioner, the interpretation is equivocal about what the 1955 Subdivision Ordinance required and why the BOC believed the November 1973 deed met those requirements. Petitioner also argues that it is not clear that the BOC even consulted the 1955 Subdivision Ordinance, as that ordinance is not contained in the record of proceedings. As a result, petitioner argues that the BOC's finding that the 1973 deed was adequate to effect a reconfiguration of the Brentwood Heights Subdivision is merely "an inexplicable, bald conclusion, and nothing more." Petition for Review 9. Petitioner urges us to provide our own interpretation of the 1955 Subdivision Ordinance standards, in the absence of any interpretation by the county.[9] Petitioner also argues that, to the extent the BOC's conclusion contains an interpretation of ZDO 202, the interpretation is either not adequately articulated or, if it is articulated, it is clearly wrong.

We agree with petitioner that the county's conclusion that the November 1973 deed satisfied the standards for a subdivision under the 1955 Subdivision Ordinance is inadequate for review. The planning director's decision characterizes the November 1973 deed as effecting a "replat" or "redivision" of the September 1973 subdivision plat. According to the planning director, the deed conforms with the requirements of the 1955 Subdivision Ordinance with respect to a "replat," with the exception that no new plat was recorded. The planning director was willing to overlook that deficiency based on equitable considerations. The BOC decision adopts the planning director's conclusion on this point as its own, but

[9] ORS 197.829(2) permits LUBA to interpret a land use regulation in the first instance if the local government fails to interpret an ambiguous provision.

differs from the planning director in interpreting the 1955 Subdivision Ordinance to not necessarily require that a new plat be recorded in order to reconfigure an existing subdivision plat. However, neither decision actually addresses the terms of the 1955 Subdivision Ordinance, or explains how the November 1973 deed complied with the requirements of that ordinance. As noted above, the ordinance defines "subdivision" to include "resubdivision," and defines "plat" to include "replat." The planning director appears to treat "resubdivision" and "replat" as synonyms. If there is any language in the 1955 Subdivision Ordinance that supports a conclusion that a deed can constitute a "replat" or "resubdivision," we have not been able to find it. Certainly the county's decision does nothing to explain that conclusion. While we have the authority under ORS 197.829(2) to interpret the 1955 Subdivision Ordinance in the first instance, we decline to do so here. *See Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101, 122 (1995) (it is the local governing body's responsibility to interpret its land use decisions in the first instance).

With respect to ZDO 202 lot of record provisions, we conclude that the BOC's first basis for concluding that tax lots 509 and 519 are separately developable is not based on an interpretation of ZDO 202. Therefore, petitioner's argument regarding the BOC's consideration of ZDO 202 under this subassignment of error provides no basis for reversal or remand.

The first subassignment of error is sustained, in part.

B. BOC Conclusion 2 (November 1973 Deed Resulted in Partitions)

The BOC's second basis for concluding that tax lots 509 and 519 are two separately developable parcels is set forth as follows:

> "As an alternative, it also appears that the [November] 1973 conveyance may have not effected a replat, but rather resulted in the partitioning of Lots 2 and 3 into the three new lots now identified as Tax Lots 508, 509 and 510. Neither the 1955 [Subdivision] Ordinance nor any other law or ordinance in effect at that time required County approval of a partition." Record 2.

Petitioner argues that the county's alternative basis for its conclusion, to the extent it is articulated, is clearly wrong. According to petitioner, the above-quoted finding is inadequate to explain what the county considered to be the applicable law and how the November 1973 deed complied with that law. To the extent there is an articulated interpretation, petitioner argues that there is no explanation for why the evidence led the BOC to conclude that the November 1973 deed resulted in a partition of Lots 2 and 3 of the original subdivision plat. Petitioner argues that if the November 1973 deed can be construed as properly re-dividing lots in a previously approved subdivision, the entire deed must be examined to determine whether the result is a series of partitions of those divided lots, or a new subdivision. Petitioner argues that, to the extent the November 1973 deed effected land divisions, those divisions resulted in four more lots than existed on the September 1973 subdivision plat and, as a result, the deed resulted in an illegal subdivision.

We understand petitioner to argue that state law, specifically Chapter 696, applies to either limit or bar the type of land division that was purportedly effected by the November 1973 deed. Chapter 696 provides, in relevant part:

> "Before a plat of any subdivision or the map of any major partition may be made and recorded, the person proposing the subdivision or the major partition * * * shall make an application in writing to the county * * * for approval of the proposed subdivision or the proposed major partition[.] Each such application shall be accompanied by a tentative plan showing the general design of the proposed subdivision or the proposed major partition. No plat for any proposed subdivision and no map for any proposed major partition may be considered for approval * * * until the tentative plan for the proposed subdivision or the proposed major partition has been approved by the * * * county." Chapter 696, Section 7.

We conclude that, even if Chapter 696 imposed a requirement that lot reconfigurations such as the one accomplished by the November 1973 deed could be defined as either a series of major and minor partitions or a subdivision, the statute did not directly apply to the November 1973 deed. In addition to the requirement that major partitions and subdivisions be subject to local review and approval, Chapter 696 also imposed on local

governments the duty to adopt regulations to implement its provisions. *See* Chapter 696, Section 9 (the local governing body "shall, by regulation or ordinance, adopt standards and procedures * * * governing the submission and approval of" subdivisions and major partitions). None of the parties have argued to us that the county adopted regulations pertaining to major partitions prior to 1974. Therefore, unless we read Chapter 696 to have itself prohibited land divisions until local governments adopted regulations to implement Chapter 696, we cannot give effect to the requirement that applicants obtain approval for major partitions and subdivisions in the absence of such regulations being adopted by the county. We believe a more reasonable view of the statute is that it imposed on local governments the obligation to implement Chapter 696 and, once those regulations were adopted, then applicants were obliged to comply with them.

We have concluded that there were no statutory provisions that governed partitions prior to the county adopting its partition regulations in 1974. We now turn to the question of whether the BOC's findings supporting the conclusion that the November 1973 deed resulted in a series of individual partitions of the lots created by the September 1973 subdivision are adequate. We conclude that they are not. As discussed above, the county's first alternative finding is that the November 1973 deed complied with the 1955 Subdivision Ordinance. Implicit in that conclusion is the premise that reconfiguring the September 1973 plat in the manner attempted by the November 1973 deed *required* compliance with the 1955 Subdivision Ordinance. The county's second alternative abandons that premise, without any explanation. In the second alternative, the county apparently chooses to view the reconfiguration attempted by the November 1973 deed not as a whole but as a series of discrete "partitions." Viewed in that manner, the county suggests, no individual "partition" in the November 1973 deed required compliance with the 1955 Subdivision Ordinance. However, the county does not explain why it is consistent with the 1955 Subdivision Ordinance to view the November 1973 deed as a series of discrete "partitions." The

November 1973 deed described 16 separate lots, coextensive with the area in which the September 1973 plat had depicted 11 lots. Without some explanation to the contrary, reconfiguration of 11 lots into 16 lots would appear to fall within the definition of "subdivision" in the 1955 Subdivision Ordinance. Avoiding the requirements of the 1955 Subdivision Ordinance by characterizing an instrument as effecting a series of discrete "partitions" rather than a subdivision would seem to thwart the intent, if not the terms, of the ordinance. There may be some explanation or authority for viewing the November 1973 deed as a series of discrete "partitions" rather than a subdivision or replat subject to the ordinance but, if so, the county's decision does not provide it.

Even if the county explains why creation of tax lots 509 and 519 as a distinct "partition" is consistent with the 1955 Subdivision Ordinance, we agree with petitioner that the county would then have to address the lot of record definition at ZDO 202. Although that definition apparently did not exist in 1973, it arguably functions as the current standard under which the county determines whether lots or parcels created by deed are recognized as separate, developable lots or parcels. As noted above, the definition of "lot of record" applies only to units of land created by a recorded "separate" deed. The hearings officer in this case ruled that tax lots 509 and 519 did not meet the lot of record definition, because those lots have always been conveyed as a single parcel described in a single deed.

The BOC decision did not address the lot of record definition, and approved intervenor's application under other, alternative theories. However, it is not clear to us that the lot of record definition is irrelevant to the county's second alternative conclusion, that tax lots 509 and 519 were created by deed. As far as we can tell, the only lawful means to divide or partition property in the county in 1973 were (1) pursuant to the 1955 Subdivision Ordinance or (2) by deed. The county apparently had no provisions for partition, and had not yet implemented the statutory partition provisions. Without some explanation from the county, we have difficulty seeing why the lot of record definition is not applicable to tax lots

509 and 519, assuming they are properly viewed as parcels created by a series of discrete partitions in the November 1973 deed.

The second subassignment of error is sustained.

C. BOC Conclusion 3 (Order No. 78-1694)

The BOC's third basis for concluding that tax lot 509 is separately developable is set out as follows:

> "[T]his Board interprets its Order No. 78-1694 * * * to allow Tax Lot 509 to be treated as a preexisting lot of record even if it could not be recognized as a platted subdivision lot or partitioned parcel. The Board believes Order No. 78-1694 applies in this situation, and finds there has been no evidence presented by any party demonstrating that this order was or now is invalid." Record 2. *See* n 8 (setting out Order No. 78-1694).

Petitioner argues that the BOC requested an opinion of the assistant county counsel as to the applicability of Order 78-1694. The assistant county counsel provided a memorandum to the BOC in response to that request. The memorandum stated, in relevant part:

> "[Y]ou asked that I give you my opinion on * * * [t]he effect of 1978 Board Order 78-1694 on the question [of] whether there are two lots of record in this case[.] * * * It is my opinion [that] BCC Order No. 78-1694 does not compel a finding that there are two lots of record in this case, for at least two reasons. First, and most fundamentally, I do not believe this order was legal when enacted, and is no more legal today. While perhaps a reasonable and practical attempt to solve a problem, it amounted to an amendment of the zoning ordinance by board order, which of course was not permitted then any more than now.
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> "Even if the order could legally be followed, there appears to be a question whether it was intended to apply to this situation, where at the time of its adoption, as well as now, two lots are in [a] single ownership. The references to 'bona fide purchasers' and 'purchaser of the lot' seem to point to the conclusion that the problem at hand was people who bought a single lot and then discovered it was unbuildable." Record 170.

Petitioner cites the county counsel opinion to support his argument that the BOC cannot use Order No. 78-1694 to circumvent the requirements for establishing a legal lot of record set out in ZDO 202. According to petitioner, even if Order No. 78-1694 may be applied in this instance, intervenor is not entitled to take advantage of its provisions because

petitioner bought property in 1986, after a dwelling was constructed on the subject property, after the RRRF-5 zoning was imposed, and most importantly, after his predecessor in interest had received a determination that the subject property was *not* separately developable.

Intervenor argues that ZDO 202 and Order No. 78-1694 can be read together to allow the county to acknowledge the existence of separate developable parcels to rectify a series of errors that were committed from the time the subdivision was first approved to the present. According to intervenor, the current parcel configuration in the subdivision is based on conveyances that either relied on the November 1973 deed, or modified the descriptions contained in that deed. Intervenor contends that by recognizing tax lot 509 as a separate, developable parcel, the BOC is merely recognizing and belatedly approving the reconfiguration of the parcels so that past mistakes in conveyancing are substantially cured.

Zoning regulations are generally adopted and amended by ordinance. *See* ORS 215.050(1).[10] In some circumstances, a resolution may be sufficient to amend an ordinance. *See Fifth Avenue Corp. v. Washington Co*., 282 Or 591, 581 P2d 50 (1978) (resolution that amended local comprehensive plan was effective, because the process used to adopt the resolution was substantially similar to that used to adopt an ordinance). Here, it is not apparent the county used procedures that were substantially similar to ordinance adoption procedures. The BOC may not adopt an order to disregard its acknowledged land use regulations, simply because those ordinance provisions are perceived to be too onerous. If the BOC believes that ordinance provisions are either unnecessary or do not further land use planning goals, it must amend the ordinance to delete those provisions; it may not by order elect to ignore them.

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[10] ORS 215.050(1) provides, in relevant part:

> "[T]he county governing body shall adopt and may from time to time revise a comprehensive plan and zoning, subdivision and other ordinances applicable to all of the land in the county."

Intervenor argues that, as an alternative to the proceedings that led to the present appeal, the county could approve a lot line adjustment that would result in separating tax lot 509 from tax lot 519. That may be so. However, the record does not demonstrate that the county's property line adjustment standards are met and in the absence of that showing, we decline to find that the county may avoid a determination that the lot line standards have been complied with merely to save intervenor the trouble of another administrative review.

We agree with petitioner that the county board of commissioners erred in applying the provisions of Order No. 78-1694 to the subject application.

The third subassignment of error is sustained.

The county's decision is remanded.