

NATURE OF THE DECISION

In LUBA No. 2006-208, petitioner appeals a letter from county counsel to the county cartography office regarding the effect of a judicial partition of property on the county’s tax maps and records. In LUBA No. 2006-231, petitioner appeals a memorandum from county counsel to the cartography office regarding the same.

JURISDICTIONAL ISSUES

A. Background

The challenged decisions in these consolidated cases are related to a dispute involving many years of litigation over a family farm property, constituting what one circuit court judge has referred to as a “civil war” between the parties to that litigation.¹ The challenged decisions in the present appeals consist of a letter (LUBA No. 2006-208) and a memorandum (LUBA No. 2006-231) from Clatsop County’s counsel to Clatsop County’s cartography office. The letter and memorandum were sent to the county cartography office by county counsel in response to an inquiry from the cartography office regarding the effect of the judicial partition of the subject property on the county’s tax maps and records.

The county counsel’s letter begins by summarizing petitioner’s position that he apparently presented to the county cartography office: that the 1994 judgment partitioning the property was ineffective. *See* n 1. In the letter, county counsel disagrees with petitioner’s apparent assertion that the judge who entered the decree of partition had no authority to do so. The letter references the provisions of ORS 105.205 *et. seq.*, which give a circuit court

¹ In *Stricklin v. Stricklin*, 97 Or App 227, 776 P2d 18, *rev den* 308 Or 660 (1989) (*Stricklin I*), the court of appeals remanded the circuit court’s decision granting petitioner’s mother, Christine Stricklin, rescission of a deed from her to William and Robert Stricklin, with instructions to the circuit court to consider William Stricklin’s cross-claim for partition. In 1994, the circuit court entered a stipulated judgment of partition, and in *Stricklin v. Stricklin*, 137 Or App 634, 906 P2d 870 (1995) (*Stricklin II*), the court of appeals affirmed that judgment without opinion. In 1999, petitioner challenged the validity of the stipulated judgment. Petitioner’s challenge was dismissed by the circuit court on summary judgment, and affirmed without opinion in *Stricklin v. Stricklin*, 178 Or App 537, 39 P3d 292 (2001), *rev den* 334 Or 75 (2002) (*Stricklin III*).

1 the authority to partition property held by tenants in common, and also references ORS
2 Chapter 92, the subdivision and partition statute. The letter notes that even though a judicial
3 partition occurred according to the provisions of ORS 105.205 *et seq*, ORS Chapter 92 may
4 “come into play.” The letter concludes: “* * * I believe that the judgment of partition is
5 ‘effective’ whether or not the requirements of ORS Chapter 92 have been met.”

6 In its motions to dismiss, the county explains that the memorandum was written in
7 response to the inquiry from the county cartographer. The memorandum, dated
8 approximately one week before the letter, begins with a short summary of *Stricklin I*. See n 1.
9 The memorandum notes that the plaintiff in that litigation, Christine Stricklin, apparently
10 passed away before the deeds effecting the partition could be executed and recorded. County
11 counsel concludes that ORCP 78A requires the county to recognize the partition as if the
12 deeds had been executed and delivered by the parties.² The memorandum directs the
13 cartographer to amend the county’s tax records and tax lot maps to reflect the partition and
14 transfers contemplated by the 1994 judgment.

15 **B. The Motions to Dismiss**

16 The county moves to dismiss these appeals, arguing that neither the letter nor the
17 memorandum is a land use decision under ORS 197.015(11) or a limited land use decision
18 under ORS 197.015(13), and thus this Board lacks jurisdiction to hear the appeal under ORS
19 197.825.³

² ORCP 78A provides:

“**A Judgment requiring performance considered equivalent thereto.** A judgment requiring a party to make a conveyance, transfer, release, acquittance, or other like act within a period therein specified shall, if such party does not comply with the judgment, be deemed to be equivalent thereto.”

³ ORS 197.015(11)(A) provides that a “land use decision” includes:

“A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

1 In one of its responses to the motion to dismiss, petitioner phrases the question
2 presented by the appeals as follows:

3 “[D]oes the partition have any effect on persons who were not party to the
4 earlier litigation, i.e. the County, or does the County have to follow land use
5 laws * * * [?]” Response to Motion to Dismiss 3.

6 Petitioner argues that the letter and memorandum constituted the county counsel’s
7 determination about whether and how the county’s land division ordinance applies to this
8 property, and thus the letter and memorandum are land use decisions under ORS
9 197.015(11).

10 First, we disagree with petitioner’s characterization of the question presented by these
11 appeals. The question presented by these appeals is whether the letter and/or memorandum
12 constitute land use decisions under ORS 197.015(11). We think they do not. The letter and
13 memorandum do not concern the adoption, amendment or application of any goals,
14 comprehensive plan provisions, or local land use regulations, and petitioner does not argue
15 otherwise. To the extent petitioner presumes that the county counsel’s reference to ORS
16 Chapter 92 concerned the application of the county’s land division ordinance, we reject that
17 argument.

18 Further, we fail to understand, and petitioner does not explain, how the county’s
19 treatment of the subject property on its tax maps and records implicates the county’s land

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- “(i) The goals;
 - “(ii) A comprehensive plan provision;
 - “(iii) A land use regulation; or
 - “(iv) A new land use regulation; * * *.”

ORS 197.015(12) defines “land use regulation” to mean:

“* * * any local government zoning ordinance, land division ordinance adopted under ORS
92.044 or 92.046, or similar general ordinance establishing standards for implementing a
comprehensive plan.”

1 division ordinance. As noted above, county counsel has made no final decision concerning
2 whether ORS Chapter 92 may still “come into play.” An instruction from the county counsel
3 to the county tax office to amend the tax maps and records to reflect the judicial partition to
4 create separate *tax* lots does not apply any land use laws and is not a land use decision under
5 ORS 197.015(11). Amending tax maps to create tax lots does not “create” additional
6 parcels. *See* ORS 215.010(1)(b) (defining the term “parcel” for county planning purposes
7 and specifically excluding from that definition “a unit of land created solely to solely to
8 establish a separate tax account.”)

9 The county’s motions to dismiss are granted.

10 LUBA Nos. 2006-208 and 2006-231 are dismissed.