

NATURE OF THE DECISION

Petitioner appeals the county’s denial of a legal lot verification request.

FACTS

In 2006, petitioner applied for a legal lot verification for a .05-acre unit of land, known as Tax Lot 400.¹ Tax Lot 400 was originally part of a larger piece of land. In 1975, the owner of that larger piece of land applied for a partition to create two parcels, Parcels A and B. Record 267-279. The county approved the preliminary partition plat. Subsequently, the county approved the final plat, which was recorded. However, as recorded, the final partition plat depicted Tax Lot 400 outside of the western boundary line of Parcel B, between that boundary line and the adjoining parcel to the west, which was owned by a different party. At the time of the recording of the final partition plat, Tax Lot 400 remained in the same ownership as both Parcel A and Parcel B.²

The planning director determined that Tax Lot 400 is not a “legal lot” as the county code defines that term, and denied the application for legal lot verification. Petitioner appealed the denial to the hearings officer. On appeal, the hearings officer initially reversed the planning director’s decision, finding that the 1975 partition created the two parcels shown on the partition plat and a “remnant” consisting of Tax Lot 400. The planning director appealed that decision to the hearings officer. On reconsideration, the hearings officer reversed, and affirmed the planning director’s initial decision that the subject property is not a legal lot. The hearings officer found that although the partition created Tax Lot 400

¹ Tax Lot 400 actually encompasses two narrow pieces of land. However, the application sought legal lot verification for only the north part of Tax Lot 400, and it is the north part that we refer to in this opinion as Tax Lot 400.

² Evidence in the record indicated that the partitioner’s intent was that the two slivers of land would be merged into the adjoining parcel prior to or concurrently with the approval of the final partition plat. Record 120.

1 as a remnant unit of land, that remnant of land was not lawfully created because it did not
2 conform to the minimum parcel size standards applicable at the time of the partition.³
3 Petitioner appealed that decision to the county board of commissioners, which affirmed the
4 hearings officer's decision on reconsideration and denied the appeal. This appeal followed.

5 **ASSIGNMENT OF ERROR**

6 Petitioner assigns error to the hearings officer's conclusion that Tax Lot 400 is not a
7 legal lot. In support of his assignment of error, petitioner makes two arguments.

8 **A. Collateral Attack**

9 Petitioner first argues that because the hearings officer found that Tax Lot 400 was
10 created by the 1975 partition, and the decision on that partition became final when the
11 partition plat was recorded in 1975, the county is barred from collaterally attacking the
12 correctness of that partition in its review of the legal lot verification request.

13 In response to petitioner's first argument, the county points out that a legal lot
14 verification request by definition requires inquiry into whether the creation of the lot in
15 question conformed with the law applicable at the time of creation. The county argues that
16 the county's review of the 1975 partition in order to determine circumstances surrounding
17 the creation of Tax Lot 400 was not an impermissible collateral attack on that partition.

18 We quote the relevant definitions found in LC 13.010(4):

19 "Legal Lot. A lawfully created lot or parcel. A lot or parcel lawfully created
20 shall remain a discrete lot or parcel, unless the lot or parcel lines are changed
21 or vacated or the lot or parcel is further divided as provided by law.

22 "Legal Lot Verification. A determination that a unit of land was created in
23 conformance with the Lane Code and other applicable law.* * *"

³ The version of the Lane County Code (LC) 13.070(1) applicable in 1975 allowed a minimum lot area of 6,000 square feet under certain circumstances, and required a minimum width of 60 feet and a minimum depth of 80 feet, not exceeding 2 ½ times its width. Record 200-203. No party disputes the hearings officer's conclusion that Tax Lot 400 does not come close to meeting those dimensional standards.

1 The hearings officer found in his initial decision that these definitions give “legal lot status to
2 lots that are lawful at the time of creation.” Record 04K.

3 We agree with the county that inherent in the definition of “legal lot verification” is
4 the necessity to inquire into whether the unit of land in question was lawfully created. The
5 county’s inquiry into the circumstances surrounding the creation of Tax Lot 400 led to a
6 review of the 1975 partition, but that is not an impermissible collateral attack on that
7 partition. The hearings officer did not determine that the 1975 partition was invalid or
8 ineffective. Rather, the hearings officer concluded that the 1975 partition had the effect of
9 creating the two parcels shown on the final plat, and a remnant unit of land, Tax Lot 400, and
10 that petitioner had failed to demonstrate that that remnant was created in conformance with
11 the then-applicable Lane Code. That conclusion does not constitute an impermissible
12 collateral attack on the 1975 partition, but rather a necessary determination under the
13 county’s legal lot verification process whether or not Tax Lot 400 was lawfully created.

14 **B. Lot Dimension Standards**

15 Petitioner next argues that the hearings officer erred in concluding that Tax Lot 400
16 did not conform to the applicable 1975 lot dimension standards.⁴ According to petitioner,
17 the text of LC 13.070 (1975) makes clear that those standards were minimum standards that
18 potentially could have been “modified” by the county under the applicable code section.

⁴ The hearings officer found:

“Tax Lot 400 was not zoned at the time it was partitioned in 1975. Section 13.070(1) of the [then-applicable] Lane Code * * * prescribed dimensional standards for parcels and lots. The smallest minimum area allowed was 6,000 square feet if a parcel or lot was classified as being either urban or if it was located within a Major or Minor Development Center or a Rural Service Center, had access to a community water system and a community sewage facility, had a minimum average width of 60 feet and a minimum depth of 80 feet not exceeding 2 ½ times its average width. The subject property was larger than 6,000 square feet but it is improbable that it had access to a community water system and a community sewage facility. More importantly, it did not comply with the minimum width or depth standards of Lane Code Section 13.070(1) as it had a maximum width of about 30 feet and a length of at least 156 feet (five times its maximum width).” Record 04H.

1 Because the minimum standards were not absolute, petitioner argues, it is not correct to
2 conclude that Tax Lot 400 could not have been created in conformance with the applicable
3 law.

4 The county responds that there is no evidence in the record to support petitioner's
5 assertion that other lot dimensions could have been approved in 1975.

6 The 1975 version of LC 13.070 provided in relevant part:

7 "The area, width, depth and layout of all parcels and lots shall meet or exceed
8 the minimum requirements of this section. Such requirements represent the
9 minimum design standards for conditions of average natural conditions and
10 development and may be increased or otherwise modified by the County when
11 such standards are found to be inappropriate to a particular division or
12 situation."

13 The hearings officer did not address petitioner's theory, advanced in this appeal, that
14 Tax Lot 400 is a "legal lot" notwithstanding lack of compliance with the minimum lot
15 dimension standards, because the county could have (but did not) approve a "modification"
16 to those standards in 1975 under LC 13.070. It is not clear to us that LC 13.070 is correctly
17 interpreted, as petitioner suggests, to have allowed the minimum lot standards to be
18 "increased or otherwise modified by the county" to create a parcel with the dimensions of
19 Tax Lot 400. LC 13.070 does not expressly provide that the minimum dimensional lot
20 standards can be reduced below those minimum requirements, as petitioner suggests.
21 Further, LC 13.070 requires that any increase or modification to the dimensional standards
22 be based on a finding that the standards are "inappropriate to a particular division or
23 situation." Petitioner cites to no evidence and makes no argument that such a finding could
24 have been made.

25 In any case, the critical point is that the partitioner did not request and the county did
26 not approve any modification of the dimensional standards. Even if petitioner's
27 understanding of LC 13.070 were correct, petitioner does not explain how the mere
28 theoretical possibility that the county could have approved a reduction in the minimum

1 dimensional standards leads to the conclusion that Tax Lot was in fact “lawfully created” in
2 1975. Petitioner has not demonstrated that the hearings officer erred in concluding that Tax
3 Lot 400 is not a legal lot.

4 The assignment of error is denied.

5 The county’s decision is affirmed.