

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 WEYERHAEUSER REAL ESTATE
5 DEVELOPMENT COMPANY,

6 *Petitioner,*

7
8 vs.

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10 POLK COUNTY,

11 *Respondent,*

12
13 and

14
15 PAT WHEELER, SARAH DEUMLING,
16 KAREN FARMER, and TREMAINE ARKLEY,

17 *Intervenors-Respondents.*

18
19 LUBA No. 2011-022

20
21 FINAL OPINION

22 AND ORDER

23
24 Appeal from Polk County.

25
26 Corinne S. Celko, filed the petition for review and argued on behalf of petitioner.
27 With her on the brief were Steven L. Pfeiffer and Perkins Coie LLP.

28
29 David Doyle, Polk County Counsel, Dallas, filed a joint response brief on behalf of
30 respondent.

31
32 Dawn Winalski, Portland, filed a joint response brief and argued on behalf of
33 intervenors-respondents.

34
35 BASSHAM, Board Member; RYAN Board Chair; HOLSTUN, Board Member,
36 participated in the decision.

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38 AFFIRMED

06/07/2011

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

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NATURE OF THE DECISION

Petitioner appeals a county decision denying petitioner’s applications for three concurrent property line adjustments.

MOTION TO INTERVENE

Pat Wheeler, Sarah Deumling, Karen Farmer, and Tremaine Arkley (intervenors) move to intervene on the side of the respondent in this appeal. There is no opposition to the motion and it is granted.

FACTS

On August 10, 2010, petitioner applied to the county to adjust the property lines of what it believed to be four separate lots totaling roughly 52 acres within a Farm-Forest Zoning District. The lots in question—numbers 10, 11, 12 and 13 within Block 2 of the Sheridan View Acres subdivision—were originally created as separate lots on September 7, 1911, when the Sheridan View Acres subdivision plat was recorded. *See* Figure A, a simplified schematic of Block 2, at the end of this opinion. The county ultimately denied the property line adjustment applications, concluding that lots 10, 11, 12 and 13 no longer existed as discrete units of land, having been vacated or consolidated in a county-approved partition in 1983.

On February 10, 1983, the county planning director approved a partition plat (the “1983 partition”) filed by petitioner’s predecessor-in-interest that created three parcels encompassing the area occupied by approximately 20 lots in the western portion of Sheridan View Acres, including lots 10, 11, 12 and 13. That 1983 partition plat was recorded on the same date it was approved by the planning director. *See* Figure B, a simplified schematic of the 1983 partition, at the end of this opinion. Other portions of Sheridan View Acres apparently were not affected by the 1983 partition. Parcel 1 of the 1983 partition included the area occupied by lots 10, 11 and 12 on the 1911 plat, plus two other adjacent lots, 8 and

1 9. Parcel 2 included the area occupied by lot 13 on the 1911 plat, plus a number of other
2 lots. The 1983 partition plat does not show any lot lines from the Sheridan View Acres plat
3 within parcels 1, 2 or 3, *i.e.* the 1983 partition plat does not depict lots 10, 11, 12 and 13 or
4 any other lot from the 1911 plat. The metes and bounds description call out the boundaries
5 for parcels 1, 2 and 3. However, the property lines for parcels 1, 2 and 3 do follow the
6 exterior lot lines of some lots created by the 1911 plat . For example, the property line
7 between parcel 1 and 2 is located in the same place as the lot line between lots 7 and 8, and
8 12 and 13 on the 1911 plat. The main issue in this appeal is whether the 1983 partition had
9 the effect of vacating the separate lot lines for lots 10, 11, 12 and 13, and consolidating those
10 lots into newly created parcels 1 and 2.

11 On February 16, 1983, petitioner’s predecessor-in-interest recorded a property line
12 adjustment (the “1983 property line adjustment”) between parcels 1 and 2 of the 1983
13 partition that placed the subject property into its current configuration. *See* Figure C, a
14 simplified schematic of the 1983 property line adjustment, at the end of this opinion. As
15 relevant here, the 1983 property line adjustment expanded parcel 1 to include the area
16 occupied by lot 13, but reduced parcel 1 by placing the area occupied by lots 8 and 9 into
17 parcel 2. As adjusted by the 1983 property line adjustment, parcel 1 consisted entirely of the
18 area occupied by lots 10, 11, 12 and 13 in the 1911 plat. The 1983 property line adjustment
19 shows the courses and distances for the boundaries of parcels 1 and 2 but does not show
20 courses and distances for lots 10, 11, 12, and 13. However, unlike the 1983 partition, the
21 1983 property line adjustment for some reason depicts with dashed lines the internal
22 boundaries between lots 10, 11, 12, and 13. The property lines of parcels 1, 2 and 3, as
23 adjusted, are depicted with solid lines. Those solid lines, unlike the dashed lines, show metes
24 and bounds.

25 In April 1983, petitioner’s predecessor-in-interest sold the land encompassed by
26 parcel 1 to Willamette Industries. The 1983 deed describes the property conveyed as “Lots

1 10, 11, 12 and 13, Block 2, SHERIDAN VIEW ACRES, more particularly described as
2 follows[.]” Record 203. The metes and bounds description that follows calls out the exterior
3 lines of parcel 1 as created in the 1983 partition and adjusted by the 1983 property line
4 adjustment, and does not describe the boundaries for lots 10, 11, 12 and 13.

5 In 1991, the county issued a road vacation order for a number of county roads,
6 including three unnamed roads dedicated in the Sheridan View Acres plat. That road
7 vacation order describes the vacated roads with reference to a number of lots, including lots
8 10 and 12 of Block 2.

9 As noted, petitioner applied to the county for concurrent property line adjustments to
10 lots 10, 11, 12 and 13, and took the position that those lots were legally created in 1911 and
11 had never been further divided or vacated, and thus remained discrete lots under ORS
12 92.017. The county planning director denied the applications, concluding that 1983 partition
13 had the effect of vacating lots 10, 11, 12 and 13 as discrete lots, and consolidating them into
14 new parcels 1 and 2. Because nothing occurring after the 1983 partition had the effect of re-
15 establishing those lots as discrete units of land, the director concluded, the lots were not
16 discrete units of land eligible for a property line adjustment.

17 Petitioner appealed the director’s decision to the county board of commissioners,
18 which held a public hearing on the appeal. On February 16, 2011, the commissioners issued
19 their decision affirming the planning director’s decision and denying the applications,
20 supported by additional findings. This appeal followed.

21 **FIRST, SECOND, AND THIRD ASSIGNMENTS OF ERROR**

22 Under the first assignment of error, petitioner argues that the county misconstrued the
23 applicable law in concluding that the 1983 partition plat vacated lots 10, 11, 12 and 13.
24 Under the second and third assignments of error, petitioner argues that the county’s findings
25 are not adequate and not supported by substantial evidence. We address these assignments
26 of error together.

1 **A. 1983 Partition**

2 ORS 92.017 provides that a “lot or parcel lawfully created shall remain a discrete lot
3 or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as
4 provided by law.” In *Kishpaugh v. Clackamas County*, 24 Or LUBA 164, 172 (1992), we
5 held that ORS 92.017 prevents local governments from refusing to recognize lawful divisions
6 of land and preserves lawfully created land divisions until “specific process[es]” eliminate
7 the property lines, by further division or vacation. We stated that ORS 92.017 requires local
8 governments to continue to recognize lawfully created lots and parcels “until some action is
9 taken to erase the lawfully-established property lines.” *Id.*

10 On appeal, petitioner argues that no “specific process” or “action” has been taken that
11 eliminated the property lines for lots 10, 11, 12 and 13 created by the 1911 plat. According
12 to petitioner, parcel 1 created by the 1983 partition, as adjusted by the 1983 property line
13 adjustment, simply followed the exterior lot lines of lots 10-13, and therefore the 1983
14 actions did not “further divide” lots 10-13 or “vacate” the lot lines. Petitioners contend that
15 the only “specific process” available to the county to “vacate” the lots within a subdivision
16 such as lots 10-13 is the process set forth in ORS 92.234.¹ Because the county did not
17 follow the ORS 92.234 review process in 1983 or at any other time, petitioners argue, lots
18 10-13 have never been “vacated” and therefore remain discrete lots, pursuant to ORS 92.017.

19 We disagree with petitioner that the only process that could result in the elimination
20 of property lines of lots created by the 1911 subdivision plat is a review of undeveloped
21 subdivisions conducted under ORS 92.234. That statute authorizes local governments to

¹ ORS 92.234 is part of a statutory series at ORS 92.205 to 92.245, adopted in 1973, that authorizes local governments to conduct a review of subdivisions that have remained undeveloped more than 10 years after recordation, and determine if the plat of the undeveloped subdivision should be revised and replatted, if necessary to comply with modern zoning and subdivision standards, or vacated if the subdivision plat cannot be revised to comply with modern zoning and subdivision standards. Under ORS 92.234(3), if the local government determines that vacation of the entire subdivision plat is necessary, the local government must adopt an ordinance vacating the subdivision. Under ORS 92.234(4), a property owner may voluntarily seek vacation of the undeveloped subdivision under city or county vacation procedures.

1 conduct a process that can lead to the enforced revision, replat or if necessary vacation of an
2 entire subdivision plat, but does not purport to comprise the universe of options for
3 eliminating property lines or vacating and consolidating lots or parcels. Property lines can be
4 eliminated and lots and parcels vacated or consolidated in a number of ways, including
5 property line adjustments (ORS 92.010(12)) and replats (ORS 92.010(13) and ORS 92.180 to
6 92.192).²

7 Further, as ORS 92.234(4) suggests, local government land use regulations can also
8 provide a process for vacating or consolidating lots and parcels. In the present case, the
9 county presumably approved the 1983 partition plat pursuant to its local partition procedures.
10 Such a partition plat approval under local regulations can, like a statutory replat, have the
11 legal effect of eliminating property lines and vacating or consolidating discrete units of land.
12 We so held in *Van Veldhuizen v. Marion County*, 26 Or LUBA 468 (1994). In that case, the
13 owner of three parcels, 194, 50 and 60 acres in size, recorded a county-approved partition
14 plat that reconfigured the three parcels into two parcels, and effectively consolidated the 50
15 and 60 acre parcels into a single 110-acre parcel. The owner later sought to gain county
16 recognition of the original three parcels, arguing that the three parcels remained discrete
17 parcels. The county rejected that attempt, and we ultimately affirmed, agreeing in relevant
18 part with the county that “[t]he recording of that plat had the legal effect of ‘vacating’ the
19 line dividing the 50-acre and the 60-acre parcels, leaving them a single parcel[.]” *Id.* at 472.
20 *See also Koo v. Polk County*, 33 Or LUBA 487, 498 n 8 (1997) (citing *Van Veldhuizen* for

² ORS 92.010(12) defines a “property line adjustment” to include the “relocation or elimination of all or a portion of the common property line between abutting properties[.]” ORS 92.010(13) defines “replat” as “the act of platting the lots, parcels and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision.”

1 the proposition that if a partition to replat a 25-lot subdivision into two parcels had been
2 completed, the partition would vacate or consolidate the 25 subdivision lots).³

3 Petitioner argues that *Van Veldhuizen* is distinguishable, because it involved parcels
4 rather than subdivision lots, and LUBA therefore did not have to consider whether the
5 statutory vacation process at ORS 92.234 is the only means to “vacate” subdivision lots.
6 Although *Koo* involved subdivision lots, petitioner argues that LUBA’s comment in a
7 footnote that a partition plat, if completed, could vacate subdivision lots was merely *dicta*,
8 because no partition plat had been completed.

9 Again, we see nothing in ORS 92.234 or elsewhere that suggests that the review
10 process for undeveloped subdivisions at ORS 92.234 is the only means to vacate or
11 consolidate individual subdivision lots. Although *Van Veldhuizen* involved parcels rather
12 than lots, we see no principled reason why the holding in that case—that an approved
13 partition plat can vacate or consolidate otherwise discrete units of land—cannot be applied to
14 lots created by a recorded subdivision plat, as the footnote in *Koo* suggests. Such a partition
15 approval pursuant to local partition regulations is a “specific process” that can have the effect
16 of “vacating” lots or parcels for purposes of ORS 92.017.

17 Nonetheless, petitioner argues that a partition plat can “vacate” lots or parcels for
18 purposes of ORS 92.017 only if it creates new property lines that *bisect* existing lot lines or
19 divide existing lots. According to petitioner, because the 1983 partition largely followed the
20 underlying exterior lot lines of certain subdivision lots in creating parcels 1, 2 and 3, the
21 legal effect of the 1983 partition was simply to create parcels 1, 2 and 3, without vacating the
22 underlying subdivision lots.⁴ Petitioner argues that “[t]he challenged decision cites nothing

³ The dissenting opinion in *Koo* argued that the record showed that the partition had in fact become final and complete, and therefore the holding in *Van Veldhuizen* should be applied to conclude that the 25 lots had been vacated by the partition plat. 33 Or LUBA at 499-501 (Livingston, dissenting).

⁴ We say “largely” because the northern boundaries of parcels 1 and 2 as depicted on the 1983 partition plat do not appear to precisely correspond with the northern lot boundaries of Block 2 as depicted on the

1 that prevents discrete legal lots from existing within a larger parcel of land, which is not an
2 uncommon occurrence.” Petition for Review 9.

3 We know of no legal, or possible, way to create a discrete lot or parcel that includes
4 within it other discrete lots or parcels, and petitioner cites none. The essence of a lot or
5 parcel is that it is discrete, legally distinct from all other contiguous units of land. We are
6 aware of no cases where a discrete lot or parcel included other discrete lots or parcels.
7 Several lots or parcels could constitute a “tract” as that term is used in various statutes,
8 including ORS 215.010(2) (defining “tract” as “one or more contiguous lots or parcels under
9 the same ownership”). It is also hard to imagine why anyone would want to create lots or
10 parcels that included nested lots or parcels. But even if a partition or subdivision could
11 create lots or parcels that include other lots or parcels, we disagree with petitioner that the
12 1983 partition had the effect of creating three new parcels, each of which consisted of groups
13 of pre-existing subdivision lots that remained discrete units of land for purposes of ORS
14 92.017. The metes and bounds description in the 1983 partition describe the perimeter of
15 newly created parcels 1, 2 and 3; they do not describe the perimeters of any 1911 lots or refer
16 to any of those lots as entire lots. The narrative to the 1983 partition states that the partition
17 was done “in order to divide one large parcel into 3 smaller parcels as shown on Map.”
18 Record 213. In other words, the 1983 partition does not appear to recognize even the
19 historical validity of the 20 lots that occupied the area of the three new parcels,
20 characterizing them as “one large parcel.” Certainly, nothing cited to us in the 1983 partition
21 description or narrative suggests an intent to continue the discrete legal existence of the lots
22 that occupy the area of the three new parcels.

23 We also disagree with petitioner that a partition plat can “vacate” lots or parcels only
24 by creating parcel boundaries that *bisect* existing lot lines. If the intent of a partition plat or

Sheridan Acres View plat. The northern boundaries of lots 6-9 dip south to follow a dedicated county road (later vacated), while the northern boundaries of parcels 1 and 2 appear to be a straight east-west line. Cf. Record 7 and 8.

1 replat is to vacate or consolidate two or more pre-existing lots or parcels, the simplest way to
2 do so is to create new property boundaries that follow the already surveyed exterior lines of
3 some of the lots or parcels to be vacated or consolidated. Petitioner offers no reason why
4 vacation can be accomplished only by creating new parcels with boundaries that bisect the
5 property lines of the lots or parcels to be vacated.

6 Finally, to the extent petitioner argues that events subsequent to the 1983 partition
7 plat had the effect of re-establishing lots 10, 11, 12 and 13 as discrete lots after those lots had
8 been vacated by the 1983 partition, we disagree. The 1983 property line adjustment did, for
9 unknown reasons, depict with dashed lines the interior property lines of lots 10, 11, 12 and
10 13, and with solid lines the adjusted boundary between parcels 1 and 2. *See* Figure C. The
11 legal significance, if any, of the interior dashed lines in parcel 1 is not clear to us. However,
12 by the time the 1983 property line adjustment was recorded, lots 10, 11, 12 and 13 had
13 already been vacated, and a property line adjustment cannot create new lots or parcels. *See*
14 ORS 92.010(12). Further, while a property line adjustment did not require county approval
15 in 1983, the county regulations at that time required county approval to partition or subdivide
16 land, and the county did not approve the 1983 property line adjustment. The survey map
17 narrative states only that the “purpose of the survey was to adjust partitioning” accomplished
18 in the 1983 partition plat. Record 214. There is no suggestion in the narrative that the
19 purpose of the 1983 property line adjustment was to re-create or re-establish as discrete units
20 of land lots 10, 11, 12 and 13.

21 **B. Remaining Issues**

22 Under the second assignment of error, petitioner argues that the county’s findings fail
23 to address issues raised regarding the county’s 1991 road vacation order, which in relevant
24 part vacated two roads dedicated to the county on the 1911 subdivision plat, and identified

1 the vacated roads with reference to certain lots created by the 1911 plat, including lots 10 and
2 12 of Block 2.⁵

3 While the county’s findings do not specifically address the 1991 road vacation order,
4 the county did conclude generally that nothing subsequent to the 1983 partition had the effect
5 of re-establishing lots 10, 11, 12 and 13 as discrete units of land, and we have affirmed that
6 conclusion. Petitioners do not claim that the 1991 road vacation order had the effect of re-
7 establishing the lots vacated by the 1983 partition, and for the reasons below we see no point
8 in remanding the decision to the county to adopt findings specifically addressing the 1991
9 road vacation order.

10 According to petitioner, if the 1983 partition had the effect of extinguishing lots 10
11 and 12 of Block 2, referenced in the 1991 road vacation order, there would have been no
12 need to undertake a separate process to vacate the dedicated roads, as the 1983 partition
13 would have necessarily vacated the roads. However, petitioner does not explain why. The
14 1983 partition did not purport to vacate any dedicated roads, and petitioner does not explain
15 how the 1983 partition plat could have accomplished vacation of roads dedicated to the
16 county on the 1911 subdivision plat without approval of the county board of commissioners.

17 Petitioner also argues that the 1991 road vacation order could not lawfully have used
18 the lots created by the 1911 subdivision to identify the roads to be vacated, unless those lots
19 continued to exist. However, again petitioners do not cite a legal requirement to that effect

⁵ In relevant part, the 1991 road vacation order identified as its subject:

“Those roads dedicated on the Plat of Sheridan View Acres recorded in Book 2, Page 25,
Polk County Record of Town Plats, and more particularly described as follows:

“* * * * *

- “2. That unnamed 20-foot roadway along the South line of Lot 12 and the West 100 feet
of Lot 13, Block 2.
- “3. That unnamed 40-foot roadway lying between Lots 5, 6, 7, 8, 9, 10, 11, 12, and 13,
Block 3, and Lots 2, 3, 4, 5, 6, 7, 8, 9, and 10, Block 2.” Record 98.

1 or explain why. The 1991 road vacation order does not indicate why it referred to the lots
2 created by the 1911 plat to identify the roads to be vacated. However, the dedicated roads
3 were unnamed, and it is not apparent how the county could have identified which roads and
4 portions of roads dedicated on the 1911 plat were to be vacated, unless the county used
5 nearby reference points on the 1911 plat. The fact that some of those reference points no
6 longer exist due to subsequent partitioning or consolidation has no legal significance, as far
7 as petitioner has established.

8 Finally, under the third assignment of error, petitioner argues that the county's
9 conclusion that the 1983 partition plat vacated lots 10, 11, 12 and 13 is not supported by
10 substantial evidence. According to petitioner, the evidence in the record overwhelmingly
11 supports a conclusion that those lots continue to exist as discrete units of land. Petitioner
12 cites to the 1983 property line adjustment, the 1983 deed conveying lots 10, 11, 12 and 13,
13 the 1991 road vacation order, and a recent tax assessor's map that depicts lots 10, 11, 12 and
14 13.

15 We have already discussed the 1983 property line adjustment and the 1991 road
16 vacation order. The 1983 deed post-dated the 1983 property line adjustment, and as noted
17 above describes the property conveyed as "Lots 10, 11, 12 and 13, Block 2, SHERIDAN
18 VIEW ACRES, more particularly described as follows[.]" Record 203. However, the metes
19 and bounds description that follows calls out the exterior lines of parcel 1 as created in the
20 1983 partition and adjusted by the 1983 property line adjustment, and does not describe the
21 boundaries for lots 10, 11, 12 and 13. We understand petitioner to argue that the 1983 deed
22 demonstrates the continued existence of lots 10, 11, 12 and 13, and constitutes evidence that
23 the 1983 partition did not have the effect of vacating those lots. However, we do not
24 understand how the 1983 deed has any bearing on the legal effect of the 1983 partition.
25 Petitioner does not argue that the 1983 deed had the effect of re-creating or re-establishing
26 lots 10, 11, 12 and 13 as discrete units of land. If that is petitioner's contention, any units of

1 land created by the 1983 deed would not be lawfully created lots or parcels, and thus would
2 not be eligible for the requested property line adjustment under the county's regulations.

3 With respect to the recent tax assessor's map at Record 130, it appears to be based in
4 part on the 1983 property line adjustment, and like that document depicts with solid lines the
5 boundaries of parcel 1 created in the 1983 partition and later adjusted, and with dashed lines
6 the interior boundaries between lots 10, 11, 12 and 13. Whatever the significance of the
7 dashed lines for tax assessment or other purposes, petitioner does not explain what bearing a
8 recent tax assessor's map has on whether the 1983 partition vacated lots 10, 11, 12 and 13.
9 Petitioner has not demonstrated that the county's conclusion that the 1983 partition vacated
10 those lots is not supported by substantial evidence.

11 **C. Conclusion**

12 In sum, the county did not err in concluding that the 1983 partition plat created
13 parcels 1, 2 and 3, and in so doing had the legal effect of vacating or consolidating the 20 lots
14 formerly occupying the areas encompassed by the new parcels, including lots 10, 11, 12 and
15 13. Those lots were vacated pursuant to a specific county-approved process under the
16 county's partition regulations, and therefore those lots are no longer discrete units of land,
17 for purposes of ORS 92.017. Accordingly, the county did not err in denying petitioner's
18 application to adjust the non-existent boundaries of those lots.

19 The first, second and third assignments of error are denied.

20 The county's decision is affirmed.

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Lot 10	Lot 9 9 acres	Lot 8 9 acres	Lot 7 9 acres	Lot 6 9 acres	Lot 5 10 acres	Lot 4 10 acres	Lot 3 10 acres	Lot 2 10 acres	Lot 1 10 acres
20 acres	Lot 11 10 acres	Lot 12 10 acres	Lot 13 10 acres	Lot 14 10 acres	Lot 15 10 acres	Lot 16 10 acres	Lot 17 10 acres	Lot 18 10 acres	Lot 19 10 acres

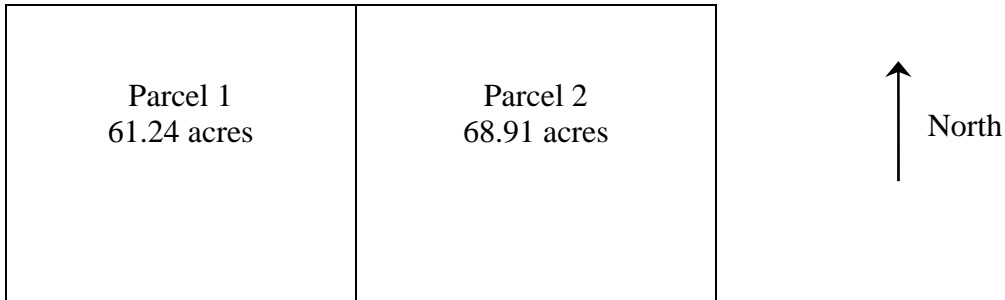
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Figure A: Block 2 of Sheridan View Acres plat (acreage approximate)

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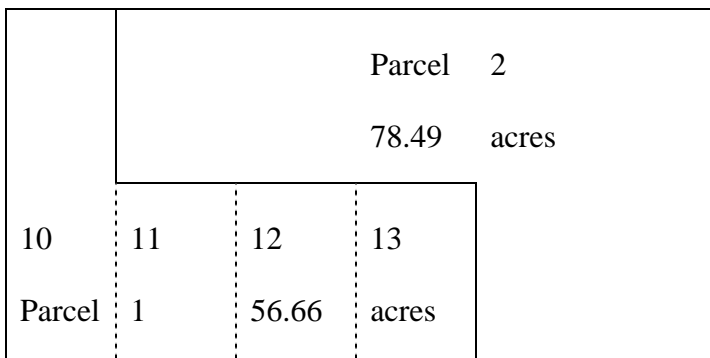
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Figure B: 1983 partition plat as it affected Block 2 of Sheridan View Acres. The eastern boundary of Parcel 2 is simplified, and Parcel 3 to the north is not depicted.

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Figure C: Parcel 1 and 2 as adjusted by 1983 property line adjustment. The eastern boundary of Parcel 2 is simplified, and Parcel 3 is not depicted.

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