

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

10/30/18 PM 1:15 LUBA

3
4 MCKENZIE BOWERMAN and
5 BOWERMAN FAMILY LLC,
6 *Petitioners,*

7
8 vs.

9
10 LANE COUNTY,
11 *Respondent,*

12
13 and

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15 VERNE EGGE,
16 *Intervenor-Respondent.*

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18 LUBA No. 2016-008

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20 FINAL OPINION
21 AND ORDER

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23 Appeal on remand from the Court of Appeals.

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25 Sean T. Malone, Eugene, represented petitioners.

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27 H. Andrew Clark, Assistant County Counsel, Eugene, represented
28 respondent.

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30 Bill Kloos, Eugene, represented intervenor-respondent.

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

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35 REMANDED

10/30/2018

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37 You are entitled to judicial review of this Order. Judicial review is

1 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioners appeal a county planning director’s decision that approves nine property line adjustments.

INTRODUCTION

In April 2015, the county planning director approved nine property line adjustments in a single decision. The nine property line adjustments significantly reconfigure eight properties zoned Impacted Forest Lands, a forest zone adopted to implement Statewide Planning Goal 4 (Forest Lands). That decision was issued without a public hearing or written notice of the decision to anyone other than the applicant. Petitioners appealed that decision to LUBA.

In *Bowerman v. Lane County*, 75 Or LUBA 86 (2017), we remanded the decision. We sustained petitioners’ first assignment of error that argued that the county committed a procedural error in failing to process the applications according to the procedure for a planning director review process in Lane Code 13.450. We also sustained the third assignment of error, and concluded that some provisions in ORS Chapter 92 implicitly prohibit a local government from approving an adjustment to a previously adjusted property line before the previous adjustment is reflected in a recorded deed.¹ 75 Or LUBA at 97-105.

¹ We denied petitioners’ second assignment of error, and that is no longer an issue.

1 Our decision was appealed the Court of Appeals. In *Bowerman v. Lane*
2 *County*, 287 Or App 383, 403 P3d 512 (2017), the court affirmed our decision
3 regarding the procedural error the county made, and declined to address the
4 appellants’ challenges to our resolution of the third assignment of error, described
5 above. The appellants petitioned for reconsideration and asked the court to
6 address their challenges to our disposition of the third assignment of error. The
7 court then issued a decision on reconsideration that addressed the issue.
8 *Bowerman v. Lane County*, 291 Or App 651, 423 P3d 172 (2018).

9 In its decision on reconsideration, the court concluded that LUBA erred in
10 sustaining petitioners’ third assignment of error. 291 Or App at 652-59. The court
11 held that “nothing in ORS chapter 92 suggests that the legislature intended
12 categorically to make the recording of an approved property line adjustment a
13 mandatory prerequisite to a local government’s approval of a further adjustment
14 to that property line,” and that LUBA erred in sustaining petitioners’ third
15 assignment of error on that basis. *Id.* at 658. The court adhered to its previous
16 decision to affirm LUBA’s conclusion that the county erred in using a ministerial
17 process rather than through the planning director review process. *Id.*

18 **THIRD ASSIGNMENT OF ERROR**

19 Consistent with the Court of Appeals’ decision, the third assignment of
20 error is denied.

1 **DISPOSITION**

2 For the reasons explained in our resolution of the first assignment of error,
3 the county's decision is remanded.