

1                   BEFORE THE LAND USE BOARD OF APPEALS  
2                   OF THE STATE OF OREGON

3                   ATR SERVICES and GREG DEMERS,

4                                   *Petitioners,*

5                                   vs.

6                                   LANE COUNTY,

7                                   *Respondent.*

8                                   LUBA No. 2021-095

9                                   FINAL OPINION  
10                                  AND ORDER  
11

12                   Appeal from Lane County.

13  
14                   Bill Kloos filed the petition for review and reply brief and argued on behalf  
15 of the petitioners.

16  
17                   Sara L. Chinske filed the response brief and argued on behalf of the  
18 respondent.

19  
20                   RUDD, Board Member; ZAMUDIO, Board Chair; RYAN, Board  
21 Member, participated in the decision.  
22

23                   AFFIRMED

04/27/2022

24  
25                   You are entitled to judicial review of this Order. Judicial review is  
26 governed by the provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioners appeal a county hearing official’s denial of an application to validate a unit of land (VUL).

**BACKGROUND**

This appeal concerns a 4.78-acre area of land designated Tax Lot 2700 and subject to the county’s land division regulations.

The county’s “first comprehensive Land Division and Land Use Regulations, Ordinance 3 and 4, were adopted in 1949 [and t]he first land partition regulation for this property was adopted on 3/26/1975. The [county’s] first ‘Legal Lot’ regulation was adopted through Ordinance 11-86, effective 9/10/1986.”<sup>1</sup> Record 180 (emphasis in original).

Lane County Code (LCC) 13.030(3)(o) and (p) currently define legal lot and legal lot verification as:

“(o) Legal Lot. A lawfully established unit of land that has been verified and noticed by Lane County through a legal lot verification pursuant to LC[C] 13.140. A lot, parcel, or verified lawfully established unit of land that complies with LC[C] 13.140(1)(a)(i) does not require a legal lot verification by the County.

“(p) Legal Lot Verification. A determination or decision made pursuant to LC[C] 13.140 that a unit of land is a lawfully established

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<sup>1</sup> County staff described the general county land use history and the history of Tax Lot 2700 in a staff report attached as Exhibit B to the planning director’s notice of pending land use decision denying the VUL.

1 unit of land.”

2 In 1991, the county issued a legal lot verification for an area of land,  
3 including that area of land now designated Tax Lot 2700, in which it found five  
4 legal lots. In 2001, legal lots were reconfigured in a property line adjustment  
5 (PLA) intended to provide two landlocked lots access to a road. Tax 2700’s  
6 current configuration is a result of that PLA.

7 In 2018, petitioners purchased Tax Lot 2700. In 2020, petitioners applied  
8 for a legal lot verification for Tax Lot 2700, that is, petitioners sought a county  
9 determination that Tax Lot 2700 is a lawfully established unit of land. LCC  
10 13.030(3)(n) defines “lawfully established unit of land” as:

11 “(i) A lot or parcel created by filing a final plat for subdivision or  
12 partition; or

13 “(ii) Another unit of land created:

14 “(aa) In compliance with all applicable planning, zoning and  
15 subdivision or partition ordinances and regulations; or

16 “(bb) By deed or land sales contract, if there were no  
17 applicable planning, zoning or subdivision or partition  
18 ordinances or regulations.

19 “(cc) Lawfully established unit of land does not mean a unit  
20 of land created solely to establish a separate tax  
21 account.”

22 In June 2020, the planning director denied the legal lot verification  
23 application based on their determination that the 2001 PLA configuring Tax Lot  
24 2700 in its current form did not comply with state law. Petitioners did not appeal  
25 the 2020 decision that Tax Lot 2700 was not a legal lot.

1 LCC 13.150 states, in part:

2 “(1) An application to validate a unit of land that was created by a  
3 sale or foreclosure that did not comply with the applicable  
4 criteria for creation of a unit of land may be submitted and  
5 reviewed pursuant to Type II procedures according to LC[C]  
6 Chapter 14 if the unit of land:

7 “(a) Is not a lawfully established unit of land; and

8 “(b) Could have complied with the applicable criteria for  
9 the creation of a lawfully established unit of land in  
10 effect when the unit of land was sold.”

11 On June 18, 2021, the planning director denied petitioners’ VUL application.  
12 Petitioners appealed the planning director decision to the hearings official. On  
13 September 20, 2021, the hearings official denied the VUL.

14 This appeal followed.

## 15 **PETITIONERS’ SECOND ASSIGNMENT OF ERROR**

### 16 **A. Standard of Review**

17 LCC 13.150(1) provides, in part, that an application may be made “to  
18 validate a unit of land that was created by sale or foreclosure” and meets certain  
19 other criteria. Petitioners argue that the hearing official misconstrued the law and  
20 erred in interpreting the VUL process in LCC 13.150(1) to only be available to  
21 land created by a sale or foreclosure. We will reverse or remand a land use  
22 decision if we find that the local government improperly construed the applicable  
23 law. ORS 197.835(9)(a)(D).

1           **B.     Creation by Sale**

2           ORS 92.176 provides in part

3           “(1) A county or city may approve an application to validate a unit  
4           of land that was created by a sale that did not comply with the  
5           applicable criteria for creation of a unit of land if the unit of  
6           land:

7           “(a) Is not a lawfully established unit of land; and

8           “(b) Could have complied with the applicable criteria for  
9           the creation of a lawfully established unit of land in  
10          effect when the unit of land was sold.”

11       LCC 13.150(1) implements ORS 92.176(1) and must be interpreted consistently  
12       with the state law implemented.<sup>2</sup> *Kenagy v. Benton County*, 112 Or App 17, 20 n  
13       2, 826 P2d 1047 (1992).

14           Petitioners base their application for a VUL on the configuration of Tax  
15       Lot 2700 resulting from the PLA and argue that “sale” is broad enough to include  
16       property configurations resulting from a property line adjustment. Finalizing a  
17       property line adjustment requires that deeds be recorded, and petitioners maintain  
18       that the hearings official “interpreted the term ‘sold’ in LC[C] 13.150(1)(b) and  
19       ORS 92.176(1)(b) too narrowly, and inconsistent with the plain purpose of the  
20       statute. In the context of this statute, ‘sold’ should be read broadly to include

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<sup>2</sup> LCC 13.130 is broader than ORS 92.170 because it extends to units of land created by sale or foreclosure, whereas ORS 92.176 applies only to units of land created by sale. Petitioners do not argue that Tax Lot 2700 was created by a foreclosure and we do not discuss this incongruity between the code and the statute further.

1 'deeded.'" Petition for Review 22. We agree with the county that "created by a  
2 sale" does not have the meaning petitioners suggest.

3 In construing the law, we will consider the text, context and legislative  
4 history of the law at issue in order to determine the intent of the enacting  
5 legislature. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d  
6 1143 (1993); *State v. Gaines*, 346 Or 160, 171-172, 206 P3d 1042 (2009). We  
7 first consider the text of the statute.

8 The text does not support petitioners' broad reading of "sale." ORS 92.010  
9 provides definitions that apply to ORS 92.192 "\* \* \* unless the context requires  
10 otherwise." ORS 92.010. As the county points out, ORS 92.010(15) defines  
11 "'Sale'" or 'sell' [as] every disposition or transfer of land or an interest or estate  
12 therein". ORS 92.010 does not define "transfer" or "disposition." Common  
13 definitions of "transfer" include "the conveyance of the right, title, or interest to  
14 another by sale, gift or other process." Webster's Third New Int'l Dictionary  
15 2427 (unabridged ed 2002). Common definitions of "disposition" include "the  
16 transfer of property from one to another (as by gift, barter, sale or by will)[.]" *Id.*  
17 at 654.<sup>3</sup> The text supports the conclusion that a sale requires, at a minimum, a

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<sup>3</sup> In their reply, petitioners cite Webster's Dictionary for a definition of "sale," which is defined as "the act of selling: a contract transferring the absolute or general ownership of property from one person \* \* \* to another for a price (as a sum of money or any other consideration)." Webster's Third New Int'l Dictionary 2003; *See Reply Brief 4*. Petitioners do not explain why we should refer to Webster's when the legislature has provided a definition of "sale," but in any

1 conveyance (the disposition or transfer) of land, or an interest or estate therein,  
2 to another. In the PLA, the owner was reconfiguring lots that they owned and  
3 would continue to own after the PLA. There was no transfer or disposition of  
4 land, or an interest or estate in land, to a new owner.

5 Context also supports the interpretation of “created by sale” as requiring  
6 more than a property owner’s adjustment of lot lines between properties they will  
7 continue to own. ORS 92.017(12) defines “property line adjustment” as “a  
8 relocation or elimination of all or a portion of the common property line between  
9 abutting properties that does not create an additional lot or parcel.” A “parcel” is  
10 a “single unit of land that is created by a partition of land.” ORS 92.010(6). A  
11 “lot” is “a single unit of land that is created by a subdivision of land.” ORS  
12 92.017(4). Reading these definitions together, a property line adjustment does not  
13 *create* an additional unit of land but rather *reconfigures* an existing unit of land.  
14 We agree with the county that the hearings official correctly concluded that no  
15 new properties are created by a property line adjustment.<sup>4</sup> The definition of

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event, the definition put forth by petitioners supports the conclusion that a sale requires a transfer of an interest in property and adds the element of consideration.

<sup>4</sup> The hearings official held that the 2001 PLA did not create a unit of land because PLAs do not create new units of land. The hearings official concluded:

“The 2001 [PLAs] did not ‘create’ the subject property. The property had already been ‘created’ in 1973. The 2001 PLAs simply adjusted the lines of three properties that had been previously created. The PLAs began with three properties and ended with three

1 “property line adjustment” in ORS 92.010 supports the interpretation that  
2 creation of a lot by sale does not include the reconfiguration of an existing lot by  
3 a property line adjustment.

4 Lastly, the legislative history supports this interpretation of the phrase  
5 “created by sale.” Petitioners posit that ORS 92.177 is relevant context because  
6 it establishes that lots may have multiple creation dates. ORS 92.177 provides:

7 “Creation of parcel by less than all owners of lawfully established  
8 unit of land. When a unit of land was sold before January 1, 2007,  
9 but was not a lawfully established unit of land, the governing body  
10 of the city or county or its designee shall consider and may approve  
11 an application for the creation of a parcel pursuant to ORS 92.176,  
12 notwithstanding that less than all of the owners of the existing  
13 lawfully established unit of land have applied for the approval.”

14 Petitioners also point to legislative history in which Department of Land  
15 Conservation and Development (DLCD) staff indicated that a unit of land  
16 validated under what became ORS 92.176 would obtain a new creation date. We  
17 do not find petitioners’ observation, that ORS 92.177 indicates that ORS 92.176  
18 *may be used to establish a new creation date* for a newly validated lot, relevant  
19 to identifying the qualifying creation date for purposes of meeting the threshold  
20 requirement for obtaining a VUL. Petition for Review 21. Similarly, testimony  
21 from DLCD staff that *approval of a VUL results in a new creation date* is not  
22 relevant to identifying the creation date for purposes of qualifying for a VUL.

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properties; accordingly, no new properties were ‘created’ by the  
2001 PLAs.” Record 5-6.



1           Lastly, the legislative history supports the interpretation that “sale”  
2 requires a transfer of an interest in property. In *LandWatch Lane County v. Lane*  
3 *County*, 79 Or LUBA 111, 117 (2019) (*Kasle*), we explained:

4           “[T]he staff measure summary for the 2007 bill that became ORS  
5 92.176 explains that the legislation was proposed to address specific  
6 problems of (1) parcels and lots being sold without buyer knowledge  
7 that the parcel or lot was unlawful, or (2) a local government  
8 previously granting building permits on unlawful lots and parcels,  
9 without requiring proof of legality. Staff Measure Summary, House  
10 Committee on Energy and the Environment, HB 2723A, April 12,  
11 2007. ORS 92.176 was intended to give cities and counties the  
12 authority to adopt procedures to allow an owner to legalize an  
13 unlawful lot or parcel, at the conclusion of which ‘a unit of land  
14 becomes a lawfully established parcel’ with the recording of a  
15 partition plat. ORS 92.176(5).”

16           The legislative history of ORS 92.176(1), coupled with the legislature’s  
17 decision to include the qualifier that the lot at issue has been created by sale,  
18 supports the conclusion that the legislative intent was to provide limited relief to  
19 purchasers of property where the sale to another created an illegal lot. Petitioners  
20 may not have known its legal status when they purchased Tax Lot 2700 in 2015,  
21 but that transaction did not create Tax Lot 2700. We agree with the county that  
22 the PLA did not constitute a sale for purposes of LCC 13.150(1).

23           The second assignment of error is denied.

#### 24           **PETITIONER’S FIRST ASSIGNMENT OF ERROR**

25           If a unit of land is created by a sale, it *may* qualify for a VUL. ORS 92.176.  
26 Additional criteria that must be met in order to qualify for a VUL include that the

1 unit of land “is not a lawfully established unit of land.” ORS 92.176(1)(a).  
2 Petitioners’ first assignment of error is that the hearings official erred when they  
3 concluded that petitioners’ application *met* the “is not a lawfully established unit  
4 of land” criterion based upon the 2020 denial of the legal lot verification. That is,  
5 petitioners assign error to the hearing official’s determination that petitioners’  
6 application *satisfied* one of the applicable criteria, based solely on the 2020 legal  
7 lot decision.

8 The hearings official concluded:

9 “\* \* \* The Hearings Official in this case is bound to follow the final,  
10 noticed legal lot verification determination issued in PA 20-05306.  
11 That is, while the VUL approval criteria require a demonstration that  
12 the property was not lawfully established, in this case, the Hearings  
13 Official does not have discretion to make that determination in the  
14 first instance. The County previously made a final determination  
15 that the subject property is NOT a legal lot, and the applicant did not  
16 appeal that determination. If the applicant believes that the law has  
17 changed in a manner that would support approval of a legal lot  
18 verification, at least under the circumstances of this case, the  
19 applicant would have to submit a new application for legal lot  
20 verification. Unless and until that happens, the Hearings Official is  
21 bound by the County’s denial in PA 20-05306.” Record 5.

22 At the appeal hearing, petitioners argued both that Tax Lot 2700 is not a legal lot  
23 and qualifies for a VUL and, in the alternative, that Tax Lot 2700 was legally  
24 established, which, in practical terms, would negate the need for a VUL.<sup>5</sup> The

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<sup>5</sup> Petitioners did not appeal the county’s 2020 decision that Tax Lot 2700 is not a legal lot and did not apply a second time for a legal lot verification. The county responds that “[p]etitioners are attempting to appeal a final land use

1 VUL application requires a showing that Tax Lot 2700 is not a lawfully  
2 established unit of land. The hearings official held that applicant met the not  
3 lawfully created criterion because the prior decision in 2020 found Tax Lot 2700  
4 was not a legal lot. Petitioners want the hearings official to go beyond finding  
5 that their application meets a relevant criterion, address an application that  
6 petitioners did not file, and verify that Tax Lot 2700 is a legal lot. However, the  
7 criteria for a legal lot verification were not before the hearings official and  
8 petitioners have not established a basis for reversal or remand based on the  
9 hearings official's failure to determine, in the challenged decision, whether Tax  
10 Lot 2700 is a legal lot.

11 The hearing official's decision is affirmed.

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decision well past the statutory deadline without notice or opportunity for appeal or challenge as required by [county] code.” Response Brief 9.