

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

LANDWATCH LANE COUNTY,

Petitioner,

vs.

LANE COUNTY,

Respondent,

and

RR HAWLEY CREEK QUARRY, LLC,

Intervenor-Respondent.

LUBA No. 2025-008

FINAL OPINION
AND ORDER

Appeal from Lane County.

Sean T. Malone filed the petition for review and reply brief and argued on behalf of petitioner.

No appearance by Lane County.

Alan M. Sorem filed the intervenor-respondent's brief and argued on behalf of intervenor-respondent. Also on the brief was Saalfeld Griggs PC.

WILSON, Board Member; ZAMUDIO, Board Chair; BASSHAM, Board Member, participated in the decision.

AFFIRMED

07/31/2025

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

NATURE OF THE DECISION

Petitioner appeals a county decision that approved two legal lot verifications.

FACTS

Intervenor-respondent (intervenor) and the Sharon K. Kester Living Trust (Kester) own the two properties at issue in this appeal. The two properties, and a third property not involved in this appeal, were lawfully created by partition in 1983. In 1999, the three properties were adjusted by recording a property line adjustment deed. The county did not have any land use processes for property line adjustments in 1999. Until the county adopted property line adjustment procedures in 2010, a property line adjustment was accomplished by filing a survey depicting the property line adjustment with the county surveyor for review and acceptance. This is the process the owners of the three original lots followed in 1999.¹ The three properties were adjusted again to their present configurations in 2016 through the county's current property line adjustment procedures.

In the present appeal, intervenor and Kester applied for legal lot verifications for their adjacent properties in separate cases. The county planning director denied both of their applications on the basis that the 1999 property line

¹ In 1996, Kester's parcel and an adjacent parcel which was not part of the original partition were adjusted by a property line adjustment that was reviewed and accepted by the county surveyor. The 1996 property line adjustment is not at issue in this appeal.

1 adjustments were unlawful because three properties were adjusted when state law
2 defined property line adjustment to involve two properties. Intervenor and Kester
3 appealed the decisions to the county hearings official, and the cases were
4 consolidated on appeal. The hearings official reversed the planning director and
5 found, among other things, that the 1999 property line adjustment was lawfully
6 approved. Accordingly, the hearings official verified the properties as legal lots.
7 The planning director sought reconsideration of the hearings official's decision.
8 On reconsideration, the hearings official adhered to her original decision
9 reversing the planning director.

10 This appeal followed.

11 **FIRST ASSIGNMENT OF ERROR**

12 Petitioner's first assignment of error is that the hearings official
13 misconstrued the applicable law and made inadequate findings not supported by
14 substantial evidence in concluding, implicitly, that the 1999 property line
15 adjustment was a land use decision as defined at ORS 197.015(10)(a)(A).²

² ORS 197.015(10)(a) provides that a "land use decision" includes:

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

"(i) The goals;

"(ii) A comprehensive plan provision;

"(iii) A land use regulation; or

1 Petitioner's argument appears to be based on the presumption that the hearings
2 official found that the 1999 property line adjustment could not be challenged or
3 collaterally attacked because it was a land use decision.

4 The hearings official determined that the subject properties were legal lots.

5 Under Lane County Code (LC) 13.030(3)(o), a "legal lot" is:

6 "A lawfully established unit of land that has been verified and
7 noticed by Lane County through a legal lot verification pursuant to
8 LC 13.140. A lot, parcel, or verified lawfully established unit of land
9 that complies with LC 13.140(1)(a)(i) does not require a legal lot
10 verification by the County."

11 LC 13.140(1) provides, in pertinent part, the process for legal lot
12 verification:

13 "(a) A legal lot verification must be reviewed pursuant to Type II
14 procedures according to LC Chapter 14, except:

15 "(i) A legal lot verification does not need to be formally
16 reviewed if the lawfully established unit of land is
17 consistent with (aa), (bb), or (cc) in this subsection, and
18 is in the same configuration or has been reconfigured
19 by a lawfully approved property line adjustment
20 application.

21 "* * * * *

22 "(bb) Parcels created by filing or recording of an
23 approved minor or major partition map between
24 1949-1990 with the County are considered
25 lawfully created."

"(iv) A new land use regulation[.]"

1 The hearings official found that the properties did not need to go through
2 the legal lot verification process because they met the requirements for an
3 exception under LC 13.140(1)(a)(i)(bb):

4 “At the onset, the Hearings Official finds that substantial evidence
5 in the record supports the conclusion that the subject properties are
6 not subject to formal legal lot verification review where they were
7 first created through a County approved minor partition between
8 1949-1990 and where later adjustments were lawfully approved. LC
9 13.140(1)(a)(i)(bb). The 1999 property line adjustment was
10 completed at a time when the County had not yet adopted local
11 regulations and procedures for reviewing and approving property
12 line adjustments. However, the County’s survey office did review
13 and accept the survey depicting the 1999 adjustments. The 2016
14 property line adjustments were also reviewed and lawfully approved
15 by the County.” Record 412.

16 Under the hearings official’s reasoning, a legal lot verification was not
17 necessary because the properties were: (1) lawfully established consistent with
18 LC 13.140(1)(a)(i)(bb) because they were initially created by a lawful partition
19 in 1983; (2) “reconfigured by a lawfully approved property line adjustment” in
20 1999 because they followed the only procedure available at the time; and (3)
21 “reconfigured by a lawfully approved property line adjustment” in 2016 because
22 they followed the county property line adjustment procedures. LC
23 13.140(1)(a)(i). There is no dispute that the 1983 partition and the 2016 property

1 line adjustment were lawfully approved – only the 1999 property line adjustment
2 is at issue.³

3 The hearings official nevertheless addressed the requirements for a legal
4 lot verification because intervenor and Kester requested a Type II process for
5 their legal lot verification. Under the ensuing legal lot verification process, the
6 hearings official considered whether the 1999 property line adjustment was
7 “lawfully approved.”⁴

³ Intervenor argues that because petitioner does not challenge the lawfulness of the 2016 property line adjustment it is precluded from challenging the 1999 property line adjustment. In other words, intervenor argues that any challenge to the current legal lot verification is an impermissible collateral attack on the 2016 property line adjustment. The hearings official, however, found that it was necessary for both the 1999 and 2016 property line adjustments to be “lawfully approved.” Record 412. While the hearings official found that both property line adjustments were “lawfully approved,” she did not find that the 2016 property line adjustment precluded any challenge to the 1999 property line adjustment. Intervenor neither filed a cross petition for review nor raised a contingent cross-assignment of error. *See* OAR 661-010-0035(7) (setting forth requirements for cross petitions for review and contingent cross-assignments of error). Therefore, we do not consider intervenor’s argument that the 2016 property line adjustment decision precludes any challenge to the current legal lot verification.

⁴ The hearings official’s decision that the properties meet the exception to the legal lot verification process and that the properties also satisfy the requirements of the legal lot verification process are based on the same reasoning. First, the hearings official found that the exception was met because the original partition was legal and the properties were adjusted by “lawfully approved” property line adjustments. Record 412. Next, the hearings official verified that the properties were legal lots – by determining that the 1983 partition was legal and the 1999 and 2016 property line adjustments were lawfully approved. Record 414. The only approval criterion for a legal lot verification is LC 13.140(3), which provides

1 Initially, the hearings official reiterated her conclusion that the 1999
2 property line adjustment was “lawfully approved” because the property lines
3 were adjusted pursuant to the only procedure available at the time. Record 414.
4 The hearings official then also addressed whether the 1999 property line
5 adjustment was correctly approved under then-existing state law. While we
6 address these issues in the second assignment of error, petitioner argues that the
7 1999 property line adjustment violated state law by adjusting property lines for
8 more than two properties.⁵ The hearings official disagreed:

9 “The [planning director’s] decision calls out that the 1999
10 adjustment of property lines among three properties in one deed was
11 unlawful under the definition of a property line adjustment. In
12 support, the [planning director’s] decision cites *Warf v. Coos*
13 *County*, 43 Or LUBA 460 (2003)]. To the extent that the 1999 property
14 line adjustments adjusted lines between more than two properties, the
15 Hearings Official concludes that this restriction on property line
16 adjustments was not known until the *Warf* decision and [the] 1999
17 property line adjustments occurred before the *Warf* decision.” Record
18 415.

19 Finally, the hearings official concluded:

20 “Based on the foregoing, the Hearings Official concludes that [the
21 properties] are legal lots based on their creation through an approved
22 partition. The subject properties kept legal lot status through
23 lawfully approved property line adjustments.” Record 416-17.

that “[a] legal lot verification will be approved if the subject property is a lawfully established unit of land as defined by this chapter.”

⁵ ORS 92.010(11) (1999) provided: “‘Property line adjustment’ means the relocation of a common property line between two abutting properties.”

1 Petitioner argues that it is “implicit” in the hearings official’s decision that
2 she considered the 1999 property line adjustment to be a land use decision and
3 that that is the reason it cannot be collaterally attacked. The crux of petitioner’s
4 argument states:

5 “Petitioner * * * submits that the Hearings Official erred by
6 determining that the acceptance of the survey by the Surveyor’s
7 Office was a land use decision. Implicitly, the Hearings Official
8 misconstrued ORS 197.015(10)(a) and the caselaw addressing
9 whether a decision is a land use decision. Again, the Hearings
10 Official did not offer any legal support for their conclusion. Though
11 not explicitly set forth by the Hearings Official, it appears implicit
12 in the Hearings Official’s conclusion that the 1999 property line
13 adjustment could not be subsequently collaterally attacked if the
14 1999 decision was, indeed, a final land use decision. The Hearings
15 Official could then conclude that [the 1983 partition] created the
16 properties and the properties remained lawfully established to this
17 day because all subsequent actions (including the 1999 adjustment)
18 were allegedly lawful.” Petition for Review 18-19.

19 Petitioner argues that the implicit conclusion that the 1999 property line
20 adjustment was a land use decision was in error because it did not concern the
21 application of any comprehensive plan provision or land use regulation, and thus
22 was not a “land use decision” as defined at ORS 197.015(10)(a)(A). According
23 to petitioner, if the 1999 property line adjustment was not a land use decision
24 then the adjustment could not be accorded any finality or protection against
25 collateral attack.

26 Petitioner misconstrues the hearings official’s decision. There is nothing
27 in the hearings official’s decision – explicit or implicit – that indicates that she

1 thought the 1999 property line adjustment was a land use decision. There is
2 nothing in LC 13.140(1) that requires any of the necessary actions to verify a
3 legal lot to have been land use decisions. There is nothing in LC 13.140(1) that
4 makes whether the 1999 property line adjustment was a land use decision even
5 relevant. The crux of this case, as we address in the second assignment of error,
6 is whether the 1999 property line adjustment was “lawfully approved.” The
7 hearings official did not determine that the 1999 property line adjustment was a
8 land use decision, and petitioner has not established that the hearings official
9 needed to make such a determination. Petitioner’s argument under the first
10 assignment of error therefore provides no basis to reverse or remand the decision.

11 The first assignment of error is denied.

12 **SECOND ASSIGNMENT OF ERROR**

13 Petitioner argues that the county misconstrued the applicable law and made
14 inadequate findings not supported by substantial evidence in concluding that the
15 1999 adjustment was “lawfully approved” for purposes of LC 13.140(1)(a)(i),
16 because the 1999 property line adjustment was inconsistent with state law at the
17 time. As noted earlier, ORS 92.010(11) (1999) defined “property line
18 adjustment” as “the relocation of a common property line between two abutting
19 properties.” According to petitioner, because the 1999 property line adjustment
20 relocated the property lines of three properties in the same instrument it did not
21 qualify as a “property line adjustment” as defined in ORS 92.010(11) (1999).
22 According to petitioner, if the 1999 adjustment did not qualify as a “property line

1 adjustment” under the then-existing definition, it must therefore have constituted
2 the *de facto* partition of land without county approval, which petitioner argues
3 was unlawful.

4 As quoted earlier, LC 13.140(1)(a)(i) provides that a property is a legal lot
5 if the property was lawfully created (there is no dispute that the subject properties
6 were lawfully created) and, if the boundaries have subsequently been adjusted,
7 that adjustment “has been reconfigured by a lawfully approved property line
8 adjustment application.” Petitioner argues that in order to approve the subject
9 properties as legal lots the correctness of the 1999 property line adjustment must
10 be revisited. Intervenor responds that the question is not whether the 1999
11 property line adjustment was legally correct and should have been approved, but
12 rather whether it received county approval under the then-applicable process.

13 The hearings official agreed with intervenor that the question was not
14 whether the 1999 property line adjustment was correctly approved under existing
15 state law, but rather whether it was approved under the existing county procedure:

16 “In appellants final rebuttal submittal * * * they assert that the
17 subject properties were lawfully partitioned * * * and the 1999
18 property line adjustments occurred at a time when Lane County did
19 not regulate property line adjustments and did not provide a
20 procedure for property line adjustment review and approval.
21 Further, appellants assert that no approval for property line
22 adjustments was needed in 1999 under state or local law and that the
23 statutes cited by the County and opponents are not approval
24 criteri[a] for lot line adjustments.

25 “The Hearings Official agrees with appellants [and] finds that the
26 subject properties are exempt from formal legal lot verification

1 review because by creation through an approved partition they are
2 lawfully established by law. Subsequent configurations were
3 lawfully approved by the County before adoption of local property
4 line adjustment regulations and after as evidenced by the County
5 Surveyor's Office acceptance of the 1999 property line adjustment
6 survey. The Hearings Official concludes that in the absence of local
7 regulations the 1999 property line adjustment was still lawfully
8 approved according to state law applicable at the time." Record 414.

9 The hearings official interpreted "lawfully approved" to mean following
10 the applicable county survey process in the absence of any local land use
11 regulations for property line adjustments. We review the hearings official's
12 interpretation to determine whether it is correct. *Gage v. City of Portland*, 133 Or
13 App 346, 349-50, 891 P2d 1331 (1995) (no "deferential weight" is accorded to
14 an "interpretation by a local entity other than the governing body").

15 While petitioner acknowledges that the properties were initially legally
16 created with the 1983 partition, petitioner argues that subsequent actions can
17 affect the lawful status of a unit of land that was once lawfully created. Petitioner
18 cites *Leckie v. Lane County*, 338 Or App 742, 566 P3d 702 (2025), for the
19 proposition that lawfully created units of land may be rendered unlawful by
20 subsequent actions. According to petitioner, the present situation is similar to
21 *Leckie*. In *Leckie*, the subject property involved a 40-acre lot created in 1912 as
22 part of a larger subdivision. That 1912 lot was later combined with other lots into
23 a new parcel approved by the county in 1977. In 1989, the parcel created in 1977
24 was illegally partitioned, without the required county review or approval,
25 resulting in a 40-acre parcel that was based in part on the lines of the original

1 1912 lot. The owner of that 40-acre parcel sought legal lot verification, arguing
2 that the parcel was “lawfully established” in 1912. The county found, and LUBA
3 affirmed, that the 1977 partition vacated the 1912 lot lines, and that the property
4 for which verification was sought was unlawfully created without county
5 approval in the 1989 deed. We determined:

6 “[T]hat the hearings [official] correctly interpreted the LC
7 provisions that implement the statutes to conclude that petitioner’s
8 property was created by deed in 1989 without compliance with the
9 applicable land division ordinance. That the property was a lawfully
10 established unit of land (or lot * * *) in 1912 when the * * *
11 [s]ubdivision was platted does not mean that the county is required
12 to ignore subsequent actions that combined that property with other
13 property and then partitioned that combined property into new
14 parcels with new boundaries. Accordingly, we agree that the
15 hearings [official] correctly interpreted the LC provisions that
16 implement the statute to conclude that *the property was created by*
17 *deed in 1989 without compliance with the applicable land division*
18 *ordinance.” Leckie v. Lane County, LUBA No 2024-024 (Oct 10,*
19 *2024), aff’d, 338 Or App 742, 566 P3d 702 (emphasis added) (slip*
20 *op at 9-10).*

21 The Court of Appeals affirmed our decision stating:

22 “[N]either the 1977 nor the 1981 partitions indicated the continued
23 existence of 1912 Lots 27 and 28. Thus, LUBA correctly concluded
24 that the 1977 partition plat vacated the original 1912 lot lines.
25 Because those 1912 lot lines were not in effect in 1989, petitioner’s
26 property was not created in compliance with the applicable statutes
27 and rules. ORS 92.010; LC 13.140(3); LC 13.030(3).” *Leckie*, 338
28 Or App at 748.

29 While petitioner is correct that *Leckie* stands for the principle that lawfully
30 created units of land can be rendered unlawful through subsequent actions, the

1 reason that the subsequent actions rendered the property unlawful was because
2 the property owner in 1989 did not follow the county's land division ordinance
3 in partitioning the 1977 parcel to create the 40-acre parcel at issue. In the present
4 case, there were no county land use procedures to follow for a property line
5 adjustment. In *Leckie*, the property owner did not comply with the required
6 county procedures in place for a land division. In the present case, the property
7 owners complied with all then-existing county procedures and regulations –
8 which were to submit the property line adjustment survey to the surveyor's office
9 for acceptance and review.

10 Petitioner argues in detail why it believes that the 1999 property line
11 adjustment violated existing state law, but petitioner does not explain why the
12 hearings official's interpretation, that by following the only then-existing county
13 procedures that the property line adjustment was "lawfully approved," is a
14 misconstruction of law other than to argue the 1999 property line adjustment was
15 not a land use decision and therefore not immune from collateral attack. As
16 explained, however, the hearings official did not find that that the 1999 property
17 line adjustment was a land use decision or otherwise immune from collateral
18 attack – instead she found that by following the then-existing county procedures
19 the 1999 property line adjustment was "lawfully approved."

20 We agree with the hearings official's interpretation of LC 13.140(1)(a)(i).
21 The subject properties were lawfully created by county-approved partition in
22 1983. The 1999 property line adjustment was lawfully approved pursuant to the

1 only county process and procedure in effect at the time – review and acceptance
2 by the county surveyor. The 2016 property line adjustment was lawfully
3 approved pursuant to the existing county property line adjustment process.
4 Therefore, the subject properties both meet the exemption from the legal lot
5 verification process and also satisfy the approval criterion for legal lot
6 verification.⁶

7 The hearings official adopted alternative findings explaining why she
8 believed that even if the underlying correctness of the 1999 property line
9 adjustment could be revisited, it complied with existing state law. As we agree

⁶ While not necessary to reach our conclusion, we note that the hearings official's interpretation of LC 13.140(1)(a)(i) is consistent with the legislature's policy of finality in matters involving Oregon's land use system. As the Court of Appeals stated in *Johnson v. Landwatch Lane County*, 327 Or App 485, 492, 536 P3d 12 (2023):

“Finality brings certainty. Certainty in this context allows private and public entities as well as ordinary people to make important decisions about whether to sell or purchase real property and whether and how to develop and use that property. LUBA was correct when it stated that a primary ‘purpose of [the land use statutes] is to provide certainty in matters involving land use for local governments, developers, opponents, and those who hold an interest in land.’ [*Johnson v. Lane County*, LUBA Nos 2022-066/067 (Feb 13, 2023) (slip op at 12).] There are many policies that no doubt play an important role in Oregon’s legal land use system * * [b]ut speed and finality are the policies selected and expressly named by the legislature as ‘objectives’ it intended ‘to accomplish’ through the legal framework it established for land use decisions. [ORS 197.805]” (First brackets in original, second and third brackets added.)

1 with the hearings official's interpretation of "lawfully approved" to mean the
2 1999 property line adjustment received all then-required county approvals, we
3 need not consider petitioner's legal, findings, and substantial evidence challenges
4 to the hearings official's alternative basis for concluding that the adjustment was
5 lawfully approved.

6 The second assignment of error is denied.

7 The county's decision is affirmed.