

**PROPOSED CHANGES TO CHAPTER 13**

**13.010 Definitions.**

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

Legal Lot Verification. A determination that a unit of land was created in conformance with the Lane Code and other applicable law. A preliminary determination shall only become final when it is made and noticed pursuant to LC 13.020.

Property Line Adjustment. The relocation of a common property line between two abutting properties.

**13.020 Legal Lot Verification.**

A legal lot verification by the Director is considered final when it is made and noticed pursuant to LC 14.100 and shall occur when:

1. An application is submitted pursuant to LC 14.050, excluding LC 14.050(3)(c), for a legal lot verification on a lot or parcel resulting from a property line adjustment; or
2. If notice is requested by the property owner for any legal lot verification, upon submitting an application pursuant to LC 14.050, excluding LC 14.050(3)(c).

LAND MANAGEMENT TASK FORCE

February 24, 2003

3:30 p.m.

Board of Commissioners Conference Room

**MEMBERS PRESENT:** Anna Morrison, Peter Sorenson, Bill VanVactor, Ollie Snowden, Chris Clemow, Cheryl Neu, Michael Evans, Terrie Monroe, Larry Olson, Allen DeGeneault, Laurie Segel, Greta Utecht, Norm Maxwell

**STAFF PRESENT:** Jeff Towery, Howard Schussler, Steve Vorhes, Kay Blackburn

**GUESTS:** Mona Lindstromberg, Robert Emmons

Utecht called the meeting to order.

1. **MINUTES**

Snowden clarified his comments "minority viewpoints" in the February 3, 2003 minutes under Future Meetings, 4<sup>th</sup> paragraph.

Segel referred to the February 10, 2003, minutes on page 3, paragraph 4, 7<sup>th</sup> sentence, and felt something was missing in the sentence regarding Clemow's comments. Clemow stated the sentence should read, "Clemow asked if there is a difference in the distinction from the long range **and other** planning **services** that the County provides."

Segel referred to page 5, paragraph 2 and interpreted Neu's comments to mean when the information is already available without cost. Neu stated that is probably what she said.

Segel referred to page 5, paragraph 8 and questioned the intent of the motion and thought Evans was referring to the previous motion and those specific Plan Amendments refer to Fuel Break Permits and others and didn't feel the motion is clearly stated. She indicated she abstained from voting on the motion because she didn't understand it. Clemow stated the motion didn't refer to Fuel Breaks and thought it pertained to the cost of processing Plan Amendments. Evans stated the motion pertained just to Plan Amendments. Towery clarified that two types of Plan Amendments are referenced – those that relate to Goal 5 and those relating to Metro Plan Amendments. Towery indicated that Evans motion was in support of the staff report. Evans stated his motion was to support a fee increase for the Goal 5 and Metro Plan Amendments. Utecht suggested deleting paragraph 7.

Evans referred to page 6, paragraph 5, and stated the send sentence should read, "He added that he feels there needs to be notification to the public and that the legal lot verification be **final** and not **preliminary**."

**Motion:** Clemow moved to approve the minutes of February 10, 2003 with the above corrections. Evans seconded. All voting members present voted in favor and motion carried.

2. **CONTINUED DISCUSSION**

Towery distributed a copy of an agenda cover memo dated June 14, 2000 on Lane Code Requirements for Legal Lot Verifications and Property Line Adjustments and the minutes of that discussion. He stated that the Board supported this staff recommendation that was to draft Lane Code language that would change and establish requirements for review of legal lot status and property line adjustments. The Board didn't make a policy decision on any detailed aspects but did give support and direction for staff to prepare changes.

Howe reviewed the Lane Code requirements for review of legal lot status. He stated that certain legal lot verifications would be required for certain land use actions. One would be if there is a Plan Amendment zone change, land divisions that would require a legal lot verification, and other uses in the Code that specify a legal lot status as a requirement for that type of use. He reviewed actions where a legal lot verification would not be required. He added that legal lot determinations would be required on properties that have been altered through a property line adjustment. He stated that the Board concurred with the concept and requested the issue come to be adopted, but the task has not been prioritized to pursue and bring back to the Board due to other priority issues.

Segel referred to the working group that prepared these recommendations and asked who comprised the working group. The representatives are identified on page 3, 2<sup>nd</sup> paragraph of June 14, 2000 cover memo.

Maxwell asked if this material is in line with the recent LUBA decision case *Ward vs. Coos County*. Vorhes stated he hasn't compared these draft policies on property line adjustments to that decision yet. He suggested that we will need to look at what has developed since 1999 and 2000 to make sure that the details of legal lot verifications and property line adjustments would be consistent with the case law that has developed since then.

DeGeneault referred to staff time that would be involved and asked what the financial implications would be. He asked how many of these type of applications occur per year. Segel stated that because so much has been done without any codified process, the prior statistics aren't able to be captured. DeGeneault asked how much time would be involved for staff to process one. Howe stated that it varies from site to site depending on how many deeds describe the property.

[Morrison and Sorenson present.]

Howe stated that there is a process in place now that deals with legal lot determinations and we have a fee associated with that. We know that workload and how it represents and equates to a full-time position. We could tabulate from that and determine what would be necessary to process fees, charge the fees necessary to cover that, and be in a position that fees would have to pay for it.

Evans reiterated that at the last meeting he had made a motion that was tabled until today's meeting that called for a legal lot determination to be a land use decision and send out notice for that on those that resulted from a property line adjustment. He asked if it could be implemented quickly and if it would have a long-term resolution of the matter. Howe stated that we have in place the procedures that would utilize and finalize to make the legal lot determination. If they don't change too much and basically all we're changing is to start providing notice of the decision, the work would involve a standardized process. We're doing legal lot determinations now, and the notice function would involve a mailing and is not too involved.

Segel feels the staff cover memo is too old and there wasn't a case law at that time, and suggested that it be readdressed. She also feels the working group is not well represented and not diverse.

Maxwell expressed concern with the lack of appeal and feels there needs to be an appealable mechanism and it needs to be easy to understand and readily apparent.

Neu stated she feels the cover memo looks good and asked if it includes a statement that it's a legal, buildable lot. She would like to see assurances that a legal lot is also a buildable lot. Howe stated that the question is whether it's a legal lot. Whether it's a buildable lot is a whole different gamut of questions, i.e. zone. It may be a legal lot, but it may not be buildable unless it meets all the zoning requirements.

Sorenson indicated that he met with a Cottage Grove resident last week who purchased a parcel near Cottage Grove and when they got ready to apply for a building permit, they were told that because it was not a legal lot, they couldn't build on it.

Neu stated that why would you apply for a septic permit if you couldn't build on the lot.

Clemow commented that there is a huge difference between legal lot and buildable lot. He requested untabling Evans motion and bring it forward. He asked staff if it addresses Maxwell's issue regarding noticing, and it makes it a land use decision, which makes it appealable. He asked staff if the motion takes care of the issues that are out there today. Howe stated the motion makes sense. It has to do with lots that have been altered since their creation that are problematic. The issue involves a property line adjustment that may have altered the legal status of that lot.

Morrison referred to a property line adjustment where one person deeded some acreage to someone else and it is recorded and asked if that would require them to go through the legal lot process. Howe stated that it would.

Segel expressed concern with the wording of the motion and asked what it leaves out and what could be excluded.

Olson commented that years ago minor partitions were not recorded. He suggested the need to certify that remaining parcels are a certain acreage or square footage and still complies with the zoning requirements for that certain area.

Morrison asked if this becomes a requirement, will previous adjustments be grandfathered or will they have to come through the new process.

Neu stated that is the problem and the problem surfaces when they go to sell their property.

Maxwell referred to Evans' motion and indicated he'd like to see some definition about lot lines such as one lot line per adjustment.

Segel feels the motion doesn't speak to the legal aspects; it addresses it as if it's a discretionary good idea and doesn't speak to in conformance with. She asked if the intent of the motion is for staff to develop a recommendation to the Board. Evans stated that the idea behind this motion is that Lane County implements State law and make the determination of the legal lot verification that this adjustment was done in accordance with State law. This motion would stay with that program. It would not ask the Board to interpret or set down new standards for what is a legal lot. It would simply provide notification for legal lot determinations that are done now and the County makes the determination that the adjustment was done in accordance with the State regulations.

Segel feels that Lane Code tells us how to do property line adjustments. Evans stated he feels Lane Code copies the State law.

VanVactor reiterated that the motion pertains to the process now for legal lot verification, but would make it a land use decision and require notice.

Snowden asked how the motion would deal with Neu's problem concerning lots that are not legal that are created when there's a property line adjustment. Basically, how does it solve this after-the-fact problem that exists. Clemow felt it wouldn't solve problems created already.

Evans indicated that when the sale of a lot is in process, many realtors will have their clients come to the County to verify it's a legal lot. This process will not be a cure all to see what's happened out there but it's going to head in that direction. It should cover most of the situations because it's an opportunity to get County sanction for a legal lot verification or property line adjustment.

Olson suggested that you may want to require a legal lot verification upon completion of the lot line adjustment.

Maxwell stated that he thought lot line adjustment and legal lot verification were one in the same. He stated he like to see clarification and definition on this issue. Olson explained lot line adjustments. He doesn't want to see lot line adjustments so difficult that it causes people to be hamstrung.

Segel asked if the Code language dealing with legal lot verification could be made available before voting on the motion. Howe stated that there really isn't Code language to do a legal lot determination; it's in the Statutes. Segel suggested that perhaps the motion needs to indicate per Statute because it doesn't speak to the legal issue.

**Motion:** [from February 10, 2003 meeting] Evans moved that the legal verification of a legal lot determination be a land use decision when they result from property line adjustments and that notification of those decisions be sent with opportunity for appeal. Neu seconded. VOTE: 9-1, Segel dissenting.

VanVactor asked when legal lot verifications result from property line adjustments, is that the only time you can do it or can it be any time anyone wants to verify a lot. Evans stated that the motion was intended to deal with the verification of legal lots that result from property line adjustments. VanVactor stated he wanted to know if this process will deal with Neu's concerns. Evans stated that perhaps another motion should be made because he sees that as a separate issue. He would expect the County be able to provide notification for other legal lots but wouldn't make it mandatory but at the discretion of the applicant. He doesn't feel all legal lot verifications are land use decisions.

**Motion:** Evans moved that any legal lot verification not involving a property line adjustment may be considered land use decisions and noticed at the discretion or option of the property owner or authorized agent. VanVactor seconded. All voting members present voted in favor and motion carried.

Segel asked how to differentiate between the two motions, would there be discretionary opportunity to apply one rather than the other.

### 3. RANGE OF FUNDING OPTIONS FOR LONG-RANGE PLANNING PROGRAM

Towery asked the Task Force to make a recommendation on funding options for long-range planning to take to the Budget Committee and Board this year with some opportunity for it to be funded. He feels existence of the Task Force will provide the opportunity for an affirmative decision by the Board and Budget Committee. He shares the concern of the Task Force about video lottery and other narrow funding sources used for Planning and supports the effort to broaden the revenue stream. He suggested short and long-term funding sources to support long-range planning.

Morrison referred to the 2-½% of video lottery we receive from the State and indicated that as of Friday that issue is on the table and we may not receive it.

Towery indicated that a combination of revenues generated by the Division this year and assuming video lottery funds are available, we could put together a funding strategy that would pay for the program for 1-2 years. The potential for more stable and long-term funding sources identified aren't on the table and ready to be implemented for the coming budget year. He feels that we need to present this option to the Board now for long-range planning on how to fund it.

VanVactor asked if there is an amount being recommended. Towery suggested \$120,000-\$150,000 in video lottery.

Segel felt we need to know how much money each recommendation is and what it would generate. She referred to the previous concern of creating a fee that looks like a real estate transfer tax and is there a way to not look like a real estate transfer tax. She feels without knowing where we are, but making a recommendation for an additional \$120,000-\$165,000 in video lottery funds, isn't very strong.

**Motion:** Neu moved to recommend additional video lottery funds and other sources of funding as an interim revenue source for long-range planning. Evans seconded. VOTE: 8-0, motion carried.

VanVactor stated that video lottery is allocated 50% for economic development and 50% for existing programs. If the Board were to authorize additional video lottery funds, they will have to take away funds from existing County programs or scale back the economic development programs approved.

Towery stated that video lottery should not be a long-term funding source for long-range planning.

Evans stated that he doesn't have a problem supporting the recommendation to look at video lottery for funding long-range planning on an interim basis. He asked if it means participation in the metro plan process, it would mean updating the Code and being involved in the Legislative process, he feels that is long-range planning and it's important and fits into the scheme of economic development. He also feels that video lottery money could be used for some of the Task Force's recommendations, making materials more available, putting more information on the computer, and using funds to be sure the counter is staffed, and providing a service for the non-paying customer.

#### 4. **TASK FORCE RECOMMENDATIONS**

Snowden reviewed the list of recommendations made up to today and will be updated based on today's recommendations. He indicated that the report that will go to the Board will include an executive summary, a motion, and an explanation of the recommendation along with supporting documentation. He stated he would like the Task Force to endorse the full package. He anticipates presenting the report to the Board the first week of April.

Morrison referred to Snowden's comments and Segel's concerns on the financial implications, and asked if the dollar amount for each recommendation could be included. She indicated that when the revenue stream is projected out, it would be predicated upon what the volume is that comes in and would be helpful to know the amount of revenue it would generate. She felt that the Task Force had agreed that things were to be revenue neutral or add on to and not decrease.

Maxwell asked if the Task Force could be present when the report is presented to the Board. Snowden anticipated preparing a draft packet with an executive summary by March 17<sup>th</sup>. He thought that he and Towery would make the presentation. The Board could then ask for comments from the Task Members present.

Morrison indicated that the minutes from all the meetings could be included in the packet, and tapes of the meetings are also available.

Segel expressed concern with Recommendation #16 that the revenue impact of the changes would be neutral, and feels it limits the division from being able to generate more revenue. Towery indicated that the services provided by the division and the permits granted and processed, the revenues generated from those actions ought to cover the cost of providing those services and that is what we're trying to accomplish through the fee schedule.

Neu feels we need to leave the fees where they are at now and look at increasing other fees.

Snowden stated that one of the goals we wanted to accomplish with the task force was to clearly identify the costs of providing the varied services we provide, and identify who is subsidizing whom. We wanted to rationalize the fee structure so we could eliminate the subsidies.

Morrison commented that what we're trying to do is that we have a service; they pay for the service and nothing more. If fees are increased, we need to be prepared on the ramifications that may occur.

Segel asked about expedited planning actions and doesn't see it codified and feels this is a potential for revenue and it should cost more. This is a service we're not capturing revenue for. Howe stated that staff is applying triage and it may appear that some things are being taken out of order. There is

an expedite process in either the Lane Manual or Administrative Procedures Manual that allows fees of about 2.0 x rate of Planner doing the work. Currently, the problem is that overtime can't be paid. The Planners are in an exempt category from paid overtime so there is no incentive for the Planners to work overtime to expedite applications.

Neu stated that she feels what we're doing is working.

Olson commented on recording fees stating that about 90,000 documents are recorded annually @ \$10 per document equates to \$900,000. He feels that the money from the Corners Fund would amount to about \$600,000. He feels there is a tremendous source of revenue here. He urged the County to sponsor legislation in increasing recording fees.

Evans indicated that Olson's comments are identified in Recommendation #12. He also suggested that the recommendations be clearer.

Snowden suggested sending a draft packet including an executive summary to the Task Force for comments by March 17 before submitting the final packet to the Board.

Neu stated that raising recording fees isn't identified in Recommendation #12 and feels it's an excellent idea and needs to be included in the recommendations.

Segel stated that she supports Olson's comments on recording fees. She asked if there is any way to implement a recording fee without going through a legislative process. Vorhes replied that it runs significant risk. He stated that it's not only the real estate transfer tax that creates potential. He indicated that there may be a way to get around it so it doesn't look like you're charging a fee for the transfer of real estate than if you were to flat out say it was for any recording of documents that transfers the title to real estate. In the current statutory scheme the Statutes that talk about the fees that the clerk collects for recording documents, it says to charge these fees and no more.

Utecht indicated this was the last meeting of the Task Force.

Snowden stated that if the Task Force views on the draft report are different, he will confer with the two Commissioners on the Task Force to see whether there should be another meeting of the task force or how to consider minority viewpoints.

Snowden thanked the Task Force members for their attendance and participation and feels some good recommendations resulted.

Segel feels staff reorganization wasn't discussed but feels we haven't looking at staffing significantly enough. She suggested a subcommittee to look at further funding options later.

Meeting adjourned at 5:25 p.m.

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Vonnie Rainwater  
Recording Secretary

*Only the portion relevant to Ordinance No.7-04 has been extracted from the original cover memo.*

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## AGENDA COVER MEMO

AGENDA DATE: April 8, 2003  
TO: Lane County Board of Commissioners  
Department: Public Works-Land Management Division  
Presented by: Greta Utecht, Task Force Chair  
Agenda Item Title: IN THE MATTER OF RECEIVING A REPORT AND  
RECOMMENDATIONS FROM THE LAND MANAGEMENT TASK  
FORCE.

**ISSUE:** Lot Line Adjustments

**Problem statement:** This issue was initiated by Task Force members and no formal problem statement was crafted. There was consensus that formal reviews of legal lot determination and lot line adjustments as land use decisions with appropriate notification, would address a wide range of concerns.

### **Discussion:**

On June 14, 2000 the Board discussed lane code requirements for legal lot verifications and property line adjustments. The Board supported the staff recommendation to draft lane code language that would change and establish requirements for review of legal lot status and property line adjustments. The Board did not make a policy decision on any detailed aspect of the staff recommendation or prioritize the project as part of a work plan, but did give support and direction for staff to prepare changes.

As an alternative top a significant code revision, the Task Force discussed steps that would call for a legal lot determination to be a land use decision subject to notice requirements to those parties impacted by a property line adjustment. The goal was to put in place a process that could be implemented quickly and allow for a long-term resolution of the matter. There was concern voiced that some property line adjustments might not be consistent with recent case law. In an effort to address the wide range of concerns identified, **the Task Force recommends that a legal lot determination be considered a land use decision when resulting from complex property line adjustments and that notification of those decisions by sent to surrounding property owners with opportunity for appeal. To address additional concerns, the Task force recommends that any legal lot verification not involving a property line adjustment may be considered a land use decision and noticed at the discretion or option of the property owner or authorized agent.**

*Only the portions relevant to Ordinance No.7-04 have been extracted from the original document.*

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## MINUTES OF BOARD OF COMMISSIONERS' WORK SESSION

April 8, 2003

9:00 a.m.

Commissioners' Conference Room

**APPROVED 7/30/03**

Commissioner Peter Sorenson presided with Commissioners Bill Dwyer, Bobby Green, Sr., Tom Lininger and Anna Morrison present. County Administrator Bill Van Vactor, Assistant County Counsel Stephen Vorhes and Recording Secretary Melissa Zimmer were also present.

### **2. PUBLIC COMMENTS**

Paul Biondi, 615 38<sup>th</sup> Place, Florence, thanked the Board for getting the word out for Blues for Hues. He said the event was a success. He noted they gave over \$20,000 to St. Vincent de Paul. He stated that radio station KRVM is closing. He said it is the true last voice in Eugene. He noted the Board were great for Blues for Hues and helped for other events. He asked the Board to save the radio station and keep it a voice in Eugene.

Dwyer thanked him for his efforts for Blues for Hues. He said KRVM does a wonderful service but the County is limited in what they do and he had no knowledge where there could be outreach to help KRVM. He said they should seek grants.

Mona Lindstromberg, 87140 Territorial Road, Veneta, stated she attended all of the Land Management Task Force sessions. She said in addition to possible reorganization and funding solutions missing from the Land Management Task Force Report are management logistic problems that were in the audit. She noted the task force agreed on long range planning to the health and well being of Lane County residents and their environment. She stated the task force needs to practice greater efficiency that would result in cost savings, generate additional revenue and assess the long-term benefits of spending money to make money. She suggested they look at staff reorganization. She thought it would be a better use of the County financial resources to consolidate top managerial positions, thereby providing more support for planners to do the work. She suggested forming a subcommittee of task force members to review the matters. She agreed about adding 3.3 FTE to Land Management. With regard to the funding options listed in the report, she recommended a systems development charge into the fee schedule where applicable. She asked legal counsel to review increasing recording fees. She hoped the County would develop a GIS program even though it might reassess the role of LCOG. She requested the Board support these changes.

Robert Emmons, 42093 Little Fall Creek Road, stated he attended almost all of the Land Management Task Force Meetings. He said they have to call attention to uninvestigated Lane Code compliance violations. He said the program has two compliance officers serving all of Lane County. He noted the program is complaint driven only. He stated the Land Management Task Force recommended that the program be administered in "an aggressive manner and self-initiate as well as complaint driven." He urged the Board to adopt the fee increases included in the report. He encouraged the Board to add two positions, as two

compliance officers are not large enough to cover Lane County. He noted while voluntary compliance is an admirable goal, it is unrealistic and there are chronic abusers. He thought an effective program would adopt language that would indicate violations of serious matters with unacceptable consequences. He also encouraged the Board to adopt a compliance surcharge on building permits and that waste management funds be used to cover compliance related garbage problems.

Norm Maxwell, 79550 Fire Road, Lorane, was supportive of the recommendations on the lot line adjustments.

Lauri Segel, 120 W. Broadway, commented that Land Management is severely understaffed and that long range planning is needed for the health and welfare of the general public. She added the task force members also agreed that this is the time to address the legal mechanism for the processing of lot line adjustments and fees for permits. She noted the County was doing a poor job in assessing fines and fees even though they are applicable.

Stuart Mulford, 350 Pearl St., Eugene, spoke on behalf of Buford Park. He said he has been a volunteer worker for over ten years. He said in the past year he had put in 150 volunteer hours. He was concerned about the proposed fee at Mt. Pisgah. He asked the Board to avoid fees at the park. He commented if they do impose a fee, the action should include a provision that they review the first summer's experience with the fee.

Roxy Cuellar, Home Builders, 2050 Laura St., Springfield, commented there are limited revenue sources. She encouraged the Board to find out what types of revenue sources were available. She noted that SDC's were not available and in terms of planning and permits, an SDC is not an option. She noted with fees for developers and builders that state law limits to actually charges for the cost of processing.

## 6. PUBLIC WORKS

### a. REPORT/Receiving a Report and Recommendations from the Land Management Task Force.

Greta Utecht, Management Services, commented that the group worked together well, giving a variety of opinions and positions on the task force. She noted they had to work hard on the recommendations for consensus. She said what came out was the need for more resources.

Jeff Towery, Land Management, explained they discussed the long range planning in detail. He noted they wanted direction on the extension of the long range planning programming, specifically the staffing level. He said if the Board supported this they would bring back different funding scenarios. He added they wanted to identify a more stable long-term funding source. He noted recommendations 4 and 5 from the task force are the areas that would best identify some of the long-range opportunities. With regard to customer service issues, the E-government project funded by video lottery was important to the task force. He said it would be their intent to submit that project as a candidate for funds from video lottery dollars.

Ollie Snowden, Public Works, stated that one of the outcomes of the task force was the work that Kay Blackburn, Internal Auditor, did in analyzing the Land Management budget. He said she identified which expenses each program incurred and which revenue was available to fund each program. He said some of the budget stress in Land Management is caused by the service they provide to non-paying customers. He explained approximately 4.5 positions in Land Management are devoted (within the course of the year) to providing service to non-paying customers. He said it was being subsidized by other sources. He said the task force was trying to find ways to either reduce the amount of counter service provided to non-paying customers by making information on line available or identify a funding source to help pay for this. He said the task force looked into increasing the use of the research fee provided in Lane Manual. He said what the task force recommended not doing was adding a surcharge for non-paying customers or increasing recording fees. He stated they would look for ways to provide information to customers without having to increase the amount of staff time at the counter.

Sorenson asked what the source of the funds would be to hire additional staff for long range planning.

Snowden separated the long range planning staff from the short range planning. He said by and large the development planning was to be covered by permit fees. He added they have customers who are not permit customers but they are asking for service from the county and that is an unfunded need. He said they could possibly use video lottery funds as an interim revenue source for the additional 3.1 planners who would be devoted to long range planning. He commented that wouldn't work unless they could identify a long-term stable funding source. He said that goes back to recommendation 3 and 4 on page 3 that looked at increasing recording fees for plats and subdivisions and looking at legislative changes to either allow long range planning as a legitimate use of the existing recordings fees or an increase in the \$10 cap on the recording of documents.

Dwyer said there should be kiosks in Land Management devoted to land planning so people could help themselves. He thought a research fee should only apply if a question can't be answered by available information. He thought that type of program could qualify for some grants. He suggested organizing this in a more efficient manner.

Snowden hoped they could have a one-time grant from video lottery funds that would build kiosks to improve e-government presence.

Liningier concurred that Land Management needs more staff for long range planning. He said they have to make it happen. He explained the criteria for video lottery would be job creation and workforce readiness. He noted that long range planning didn't meet any of the criteria. He said if they don't have long range planning, they would have problems in the future. He asked if Lane County's commitment of money to other entities to do planning needs to be reviewed. He commented if they don't come up with a way to hire to 3 FTE, then they should direct budget to come with different scenarios. He wanted to make this a priority. He stated Lane County's failure to fund the processing of permits is costing them money in the long run. He concurred with the recommendations of the report. He wanted more money for staff.

Towery explained with the long range planning program, they will need \$200,000 in addition to what they have now to fund the three new positions. He noted the growth in their planning surcharge resulting from the rate increase would generate a portion of that. He said they were looking at \$150,000 to \$170,000 of additional revenue to fill out the program. He commented that without knowing if there is board support for the concept it would be hard expanding a long range-planning program. He wondered if it was wise to use their resources to come up with formal funding.

Morrison didn't think it was necessary that they hire the full 3 FTE's at this time until they figure out what Lane County would be required to do from the state's perspective. She wanted to see what the additional revenues would be with the recording of the plats and subdivisions and the Corners Fund. She said that could tell them how close they could be to adding one person. She was concerned about giving money to planning when there are tremendous mental and public health needs.

Sorenson asked Snowden if the Board could get information on the amount of money that could be used in the Land Management Division from Title III federal funds, Waste Management, Corners Fund, the surcharge to offset the non-paying customers, the research fee and the plat and subdivision recording. He noted the pressure on the general fund would be so severe that it is not a good planning exercise for them to use. He added Land Management doesn't generate enough infractions to be self-supporting. He didn't think Lane County was doing enough to ensure compliance with land use laws and thought there should be a way to get money into the compliance program.

Snowden commented that some of the funding sources have restrictions on their use. He said he could come back with more detail given the assumptions that they could put it into long-range planning. With regard to compliance, he said they have to start with a philosophy statement and the priorities that are attached to the packet. He noted those were crafted around their existing program. He added if the Board disagrees with how they are running the program, then it needs to be reflected in the philosophy statement.

Linger stated because of limited code enforcement resources, there would be times when all code violations could not be given the same level of attention and some might receive no attention at all. He feared that lax enforcement doesn't give enough weight to the law-abiding citizens. He noted there had been past funding from economic development funding video lottery for LCOG and for in-house land use planning. He said the amount of money they were willing to spend last year in the strategic fund was \$900,000. He noted this year the fund is \$300,000. He commented in the coming year there is \$140,000 set aside for Land Management for the West Lane County Rural Comprehensive Plan. He suggested finding a way to fund long range planning.

Dwyer wanted to develop a program more in line with what they get paid to do. He stated people shouldn't spend time at the counter for things they could look up themselves. He said if they are going to take a more aggressive approach, they need to take the policy that if the law is not obeyed, they would be pursued by counsel. He suggested utilizing the waste management fund to clean up some of the sites.

Green commented that long range planning had been a long-term problem with Lane County. He said they have customers who have paid fees and others who have not. He said a substantial amount of Land Management customers are not paying money. He asked how they should subsidize for customers who do not pay. He asked if the Board was committed to long range planning and if that is true, they have to make sure the resources should be just as committed. He supported the kiosk and if more information is needed, it should be paid for. He suggested examining Title III funds. He said they should use a formula to determine fees.

With regard to Title III, Morrison thought it was a Catch 22 because of how they leveraged Title III money in order to get the Forest Work Camp up to where it is and the increased cost in benefits. She commented they had been as creative as they could with Title III dollars.

Sorenson commented the recommendation to fund long range planning is good. He said with regard to the Title II, Title III split, it is a discretionary decision of the County and they could increase the amount of money they put into Title III eligible projects. He suggested combining the administration of Land Management and Waste Management as a cost savings opportunity. He thought there was a relationship between land use compliance and people who are dumping garbage. He suggested increasing the use of people other than planners to provide information at the counter. He wanted to see staff work on whether there are efficiencies to save positions at the service delivery level by changing the organizational chart of the department.

Lininger commented there was money set aside for open space acquisitions. He thought that money could be freed up for long range planning. He requested that information be reported back within three weeks.

Towery reported the compliance and policy statement that the Board adopts would drive the rest of the decisions around compliance. He suggested a work session dedicated to compliance philosophies and policy. He noted a suggestion by the Land Management Task Force is that they have language in Lane Manual that allows sanitation fees in a compliance case. He said they could pursue that if that is what the Board wants. With regard to the revenue, he said the task force thought there should be more of a progressive fee schedule for planning to sign off for building permits and for complex plans amendments. He noted there was language in the fee increase that addresses those issues.

With regard to fuel break permits, Towery noted it is where the Land Management Division currently receives Title III funding and people who are paying for those permits are being subsidized by the Title III revenue that the County had allocated to that program. He said it would require a fee increase of 125%. He said if the Board wanted to eliminate the subsidy that exists, it would generate another \$50,000 to \$60,000, freeing up Title III revenue for allocation to another program. He said that is an option in the staff report for fee increases. **With regard to lot line adjustments, he noted a detailed proposal came before the board about dealing with legal lot verifications and property line adjustments. He said the potential of pursuing the action before the Board a few years ago would be a reworking to address the issues. He noted the task force tried to identify a system whereby lot line adjustments and legal lot determinations would be classified as**

**land use decisions and would require notice in certain circumstances. He said there would be a requirement to change language to accommodate that direction.**

Sorenson said they would schedule additional time in four weeks to get more Title III information.

Snowden commented the Board had a list of funding sources for long range planning. He added the Board also wanted to look at using Waste Management funds for clean up and clean up restoration and compliance. He said he would come back with a report on that.

Morrison suggested waiting until after the budget was approved to discuss this matter.

Dwyer stated they had to analyze making Waste Management part of compliance as an overall picture. He said there was a legitimate fund they could use for clean up to help recover costs. He suggested moving forward with the things they have the ability to settle.

Green suggested the agenda team work with staff, bringing this back in a series of work sessions.

Sorenson stated the first work session should be on revenue options.

There being no further business, Commissioner Sorenson adjourned the meeting at 11:45 a.m.

Melissa Zimmer  
Recording Secretary

*Only the portions relevant to Ordinance No.7-04 have been extracted from the original cover memo.*

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## AGENDA COVER MEMO

**DATE:** JULY 30, 2003, Meeting Date  
**TO:** BOARD OF COUNTY COMMISSIONERS  
**FROM:** KENT HOWE, PLANNING DIRECTOR &  
JEFF TOWERY, MANAGER. LAND MANAGEMENT DIVISION

**AGENDA ITEM TITLE:** In the Matter of Reviewing and Approving the Long Range Planning Work Program and Implementation Plan

### I. MOTION:

Recommendation on prioritization of Long Range Planning Work Program pursuant to Matrix Checklist, attached.

### II. ISSUE OR PROBLEM

Over the last several years the Long Range Planning Program has been reduced significantly. Currently the Long Range Planning program consists of 1 FTE devoted to the State mandated Periodic Review of the Rural Comprehensive Plan. As a result of recommendations of the Land Management Task Force, 3 positions are being added back (two Planners and a Land Management Technician) to address Lane County's long range planning needs and provide a reserve capacity for new items that the Board may have an interest in addressing. This memo provides the Board with a list of potential long range planning projects. Staff requests the Board to indicate the order in which the long range projects should be addressed.

### III. DISCUSSION

#### A. BACKGROUND

Staff have kept track of the Board's interest in specific long range planning projects over the last several years. This list was presented to the Lane County Planning Commission at their meeting this month. With a more robust Long Range Planning Program of 4 FTE, we need to know to which projects the Board wishes to have the resources allocated.

At this time we have adequate funds from a variety of funding sources (long range planning surcharge, recording fees and Title III) to hire one of the Planner positions. The remaining positions will not be filled until the Legislature adjourns and video lottery dollars are confirmed.

The Planner positions have been posted. Upon the close of the Legislature and the known disposition of the Video Lottery proceeds to Lane County, we will fill the second Planner and Land Management Technician (LMT) position. The LMT position has not yet been posted and would take an additional 2-3 months to fill. After consultation with staff from County Administration and County Counsel, several projects identified in this recommendation were determined to be eligible for Title III funding.

As mentioned earlier, 1 FTE is currently addressing the mandated Periodic Review requirements.

The Board has expressed interest in having a staff presence in Metro planning efforts and to be able to provide assistance for small city planning efforts. In addition, the Board has indicated the importance of E-government access. Staff recommend that these projects (Metro, Small City and E-government) would consume an additional 1 FTE.

Of the remaining 2 FTE, .5 FTE would be held as a reserve capacity to address new projects, unknown at this time. The objective is for the Board to prioritize the remaining projects from the attached list on which the 1.5 FTE would concentrate their efforts.

#### **B. ANALYSIS**

The Lane County Planning Commission recommendations are shown on the attached list.

#### **C. ALTERNATIVE/OPTIONS**

1. Provide staff direction on priorities for long range planning work program
2. Take no position.

#### **IV. ATTACHMENTS:**

1. **Matrix Checklist**
2. **List of Rural Comp Plan Long Range Projects**
3. **Proposals Qualifying for Title III funding**

**MATRIX CHECKLIST OF  
NON-MANDATED RURAL COMP PLAN  
LONG RANGE PLANNING PROJECTS**

PROJECT	FUNDING SOURCE				DURATION	FTE	LCPC Rec.	Board Priority
	Video Lottery	LRPS	Recording Fees	Title III				
<b>Legal lot a.</b>		<b>v</b>	<b>v</b>		<b>6 months</b>	<b>.3</b>	<b>v</b>	
<b>Legal lot b.</b>		<b>v</b>	<b>v</b>		<b>12 months</b>	<b>.3</b>	<b>v</b>	
<b>Revisions to Telecom. Tower Stands</b>		<b>v</b>	<b>v</b>		<b>6 months</b>	<b>.3</b>	<b>v</b>	
<b>Revisions Riparian Regulations</b>				<b>v</b>	<b>6 months</b>	<b>.75</b>	<b>v</b>	

**LIST OF RURAL COMP PLAN LONG RANGE PROJECTS  
JULY 30, 2003**

**HIGHER PRIORITIES RECOMMENDED BY LCPC**

Legal lot and Property Line Adjustment Policy Review:		
a. Land use decision by definition, <u>or</u>	.3	6 months
b. Address comprehensive policy issues	.3	12 months
LC 16 and LC 10 Revisions to Telecommunication Tower Standards	.3	6 months
LC 16 revisions to Class I Stream Riparian Regulations*	.75	6 months
LC 16 amendments for Community flood rating system	.2	6 months
LC 13 amendments for groundwater requirements to demonstrate long-term water availability	.2	6 months
Legislative and Rule Updates to Lane Code**	.25	6 months

\* Title III qualifying.

\*\* See updates for HB 2691 and LCDC March 21 Rule Amendment OAR 660-22-030(3), (11).

**M I N U T E S**

**Lane County Planning Commission**  
Harris Hall - Lane County Courthouse

February 17, 2004  
7 pm.

PRESENT: Juanita Kirkham, Chair; Chris Clemow, Vincent Martorello, Ed Becker, James Carmichael, members; Kent Howe, Steve Hopkins, Staff;

ABSENT: Mark Herbert, Marion Esty, Steve Dignam, Jacque Betz,

**I. CONTINUATION FROM 1.20.04 - Deliberation only on: PA 02-5838 - Plan Amendment & Zone Change from E-40 Exclusive Farm Use to Marginal Lands/18-04-11, tax lots 300 and 304, 3101 Timberline Drive, Eugene. 113.7 acres. Owners; B. Ogle, and M. Childs**

Ms. Kirkham convened the meeting at 7 pm. She noted that the first item was deliberation only. She noted that there was not a quorum and postponed the item until March 2, 2004.

Mr. Martorello raised concern that postponing the item for March 2 would overload that evenings agenda.

Mr. Howe suggested that the deliberations could be held during the 5:30 work session. He noted that the work session agenda was light for that evening. There was general consensus among the commission.

**II. PA - 01-5649**

The applicant withdrew the application.

**III. AMENDING LANE CODE 13.010 by adding definitions of "Legal Lot", "Legal Lot Determination", and "Property Line Adjustment", and adding Lane Code 13.020 regarding notice of legal lot determination.**

Mr. Hopkins stated for the record that it was Lane Code 13.010 and 13.020 that would be amended. He submitted an E-mail from Mike Evans into the record. He said the amendment would require a final verification unless the lot was in the same configuration as when it was created. He said the final verification would provide legal notice to neighbors and interested parties as well as an opportunity for an appeal. The amendment would also allow the Director to issue a final verification prior to submittal of a development application. Currently, only a preliminary verification is issued.

Ms. Kirkham opened the public hearing.

**Jim Just**, Goal One Coalition, said a legal lot determination could not be used to do a lot line adjustment. He said if it were used for that purpose then it would not be according to State land use law.

Mr. Just said because Lane County had no property line adjustment procedures it was required to use the procedure outlined in ORS 92.193 allowed a local government to use procedures other than the re-platting procedures outlined in ORS 92.180-185 if it adopted procedures that met minimum statutory requirements. He said the reason they would not comply was that there had never been an approved lot line adjustment recorded. He referred commissioners to the written testimony from 1000 Friends of Oregon.

**Norm Maxwell**, 79550 Fire Road, said he had several lot line adjustments and commented that it was not an orderly and well thought out plan. He stressed the importance of having a legal lot verification at the time of sale of property. He said citizens needed to be able to know that lots were legal.

**Bob Ezell**, 2852 Windgate Street, Eugene, questioned the minimum size of a legal lot. He surmised that the current practice of the County was contrary to the State process for identifying a legal lot. He added that old county roads that only existed on record were being used to divide properties into legal lots. He cited a ruling in Lincoln County that had stopped the county from doing the same thing that Lane County was currently doing. He raised concern that Lane Code was against Oregon Land Use laws.

**Ann Davies**, 433 West 10<sup>th</sup> Avenue, said the road dividing lots issue represented an important part of the County process. She said she had been the attorney for the Lincoln County case. She said it had been the practice in Lane County to have two legal lots divided by a road whether the road only existed on record or not. She said this issue had not been addressed in the proposed amendments.

Ms. Davies proposed wording that would provide that a final verification be done when a parcel had been divided by a road. She said this suggested policy was supported by the cover memo of the meeting packet. She also suggested using the term "unit of land" rather than parcel or lot so the language would be clearer.

**Ron Eber**, Department of Land Conservation and Development, said he had been in consultation with counties around the state on the same issue. He said a legal lot verification process would be a good thing to do. He stressed the importance of being able to verify a legal lot as soon as possible to avoid the complications of trying to get a final verification after the property had been sold through multiple owners.

Regarding the definition of legal lot, Mr. Eber said the language in ORS 92.017 be put somewhere in the language of Lane Code as a guideline for people to understand lots and parcels.

Mr. Eber said Ms. Davies' suggestion was a good one that would help verify lots or parcels. He said the language suggested by staff for approval was good up to a point but stressed that most counties went beyond just incorporating lot or parcel definitions and were more specific about

partition ordinances or minimum lot sizes. He said this would provide people with more information as to what kinds of lots or parcels would be recognized. He suggested looking at Lynn or Benton County's ordinances.

Mr. Eber said the road issue had been a continuing source of concern for the State. He said the better the language was clarified in the ordinance the better citizens would be protected.

In response to a question from Ms. Kirkham regarding the definition of partitioned land, Mr. Eber said the third item under the Lane Code definition that dealt with the issue of right-of-way did not have the latest statutory language. He suggested adding statutory language from ORS 192.010(7)(d).

Mr. Hopkins noted that definition was not part of the amendment before the Planning Commission that evening. He said only the definition of "legal lot," "legal lot verification," and "property line adjustment" was included in the suggested amendment.

**Robert Emmons**, Land Watch Lane County, seconded Mr. Eber's comments. He said he had attended most of the task force meetings. He said the main focus of the task force had been to see how the Land Management Division could better serve its customers.

Mr. Emmons cited Warf versus Coos County which sought to define a property line adjustment and make such an action a land use decision. He said the case law was compelling that the County should be doing the same thing. He said the present staff proposal did not deal with that issue.

**Laurie Segel**, 120 West Broadway, submitted comments that she felt should be included in the staff proposal. She said the proposed amendments did not go far enough to address the issues raised during the public hearing.

Ms. Kirkham closed the public hearing and called for commission deliberation.

Mr. Becker questioned why the County would not require final determination to protect the public.

Mr. Martorello suggested that there be an exception process for a final determination rather than doing preliminary determinations.

In response to a question from Mr. Clemow regarding whether lot line adjustments were not land use decisions, Mr. Hopkins said that was true because the County did not regulate lot line adjustments.

In response to a question from Mr. Clemow regarding whether there could be lot line adjustment prior to a legal lot determination which could result in a lot not being legal, Mr. Hopkins said there was nothing in the amendment to require an application for verification. He said there was nothing in the amendment that would prevent creating an illegal lot. He said nothing was being changed in the code excepting the provision of notice for a final verification.

In response to a question from Mr. Clemow regarding why there was not a process to avoid creating illegal lots, Planning Director Kent Howe said the specific direction from the Board of Commissioners that legal lot verification be a land use decision when they resulted from property line adjustments and the notification of those decisions be sent with opportunity for appeal. He said that vote had been passed by the Land Management Task Force by a vote of 9:1.

Mr. Howe reviewed the minutes of the Land Management Task Force showing where the decision had taken place.

In response to a question from Ms. Kirkham regarding whether the task force had decided not to make lot line adjustments a land use decision, Mr. Howe said the task force tried to get at the root issue which was notice of property line adjustments that were allowing development to occur on neighboring property. He noted that the task force could not agree on property line adjustments but could agree on providing notice to adjacent or affected properties.

Mr. Martorello noted that it was counter intuitive to do a lot line adjustment before a final legal lot verification. He said there could be a lot of damage done to a development if the lot were not found to be legal. He said he did not know how to rectify the situation in the context of the proposed amendments.

Ms. Kirkham said she was uncomfortable with approving the amendments for that reason.

Mr. Becker reiterated his earlier question about requiring a final determination instead of offering the option of a preliminary determination.

Mr. Clemow said the road issue and the question of making lot line adjustments a land use decision were not addressed by the proposed amendments. He said he would vote to approve the amendments with the strong recommendation that those two issues be addressed.

Mr. Carmichael, seconded by Mr. Clemow, moved to approve the recommended amendments as presented by staff.

Mr. Martorello said he would vote in favor with the caveat that the language did not go far enough and strongly suggested that there be further discussion on the matter of lots being verified by roads on record.

The motion passed 3:2 with Ms. Kirkham and Mr. Becker voting in opposition.

Mr. Martorello, seconded by Ms. Kirkham, moved to request the Board of County Commissioners look at a work program to address the issues identified during the public hearing and open the discussion with the intent of adopting significant policy and code revisions that addressed those problems. The motion passed unanimously.

The meeting adjourned at 8:15.  
(Recorded by Joe Sams)

### Written Comments Regarding Ordinance #7-04

All items were submitted between December 1, 2003 and February 28, 2004

<i>Name</i>	<i>Date of Document</i>	<i>Type</i>
Mike Evans	January 2, 2004	Email
Steve Cornacchia	January 5, 2004	Email
Laurie Segel, 1000 Friends of Oregon & Bob Emmons, LandWatch Lane County	January 16, 2004	Email
Eben Fodor	January 19, 2004	Email
Larry Olson	January 26, 2004	Email
Anne C. Davies	February 6, 2004	Email
K. Robert Ezell	February 6, 2004	Email
K. Robert Ezell	February 6, 2004	Email (revised and resubmitted)
Mike Evans	February 17, 2004	Email
Norm Maxwell	December 31, 2003	Email
	January 8, 2004	Email
	January 9, 2004	Email
	January 13, 2004	Email
	January 20, 2004	Email
	January 23, 2004	Email
	January 27, 2004	Email
	March 9, 2000	Submitted document
	March 20, 2000	Submitted document
	May 16, 2000	Submitted document
	December 2, 2002	Submitted document
	January 5, 2004	Submitted document
	January 25, 2003	Submitted document

From: Mike Evans [landplancon@comcast.net]  
Sent: Friday, January 02, 2004 9:35 AM  
To: HOPKINS Steve P  
Subject: Re: legal lot notification

Steve, the amendment dealing with notification looks good to me - Thanks  
Mike

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From: Steve Cornacchia [scornacchia@hershnerhunter.com]  
Sent: Monday, January 05, 2004 10:56 AM  
To: Steve.HOPKINS@co.lane.or.us  
Subject: Re: legal lot notification

Thanks Steve. Just a thought: Shouldn't the definition of "Legal Lot Determination" be "... in conformance with the Lane Code or other applicable law." I am thinking of the lots created prior to any Lane Code treatment of subdivisions, partitions, etc. Or maybe "and/or" ?  
Steve

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From: Lauri Segel [lauri@friends.org]  
Sent: Friday, January 16, 2004 4:24 PM  
To: HOPKINS Steve P  
Cc: hopsbran@aol.com  
Subject: RE: legal lot notification

Please include the attached comments on 'legal lot notification' into the record for review by the Planning Commissioners in preparation for the February 17 public hearing on this topic-  
Please confirm receipt of these comments.  
Thank you for your help.

Lauri Segel  
Lane County Planning Advocate  
1000 Friends of Oregon  
120 West Broadway  
Eugene OR 97401

phone: 541 431 7059  
fax: 541 431 7078  
email: lauri@friends.org

The things you cherish today about a life lived in Oregon--  
\* vibrant communities  
\* productive farm and forest lands  
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-- can be a part of the legacy you leave for future generations

Join 1000 Friends of Oregon online:  
[www.friends.org/support](http://www.friends.org/support)

January 16, 2004  
Steve Hopkins, Planner  
Lane County Land Management  
125 East 8<sup>th</sup> Street  
Eugene, OR 97401

**RE: Draft for legal lot notification**

Mr. Hopkins:

These comments are being submitted on behalf of 1000 Friends of Oregon and LandWatch Lane County.

Your memo of December 30 contains a draft proposal to require notification of legal lot determinations in certain circumstances. The proposal is comprised of three new definitions and one new section of code. 1000 Friends of Oregon and Landwatch Lane County are concerned that the

draft definitions and code section are unclear or inadequate, and that this proposal as drafted fails to meet requirements of statutes and of case law pertaining to lot-line adjustments.

## **1. Comments on draft language**

### **a. 13.010 Definitions. Legal Lot.**

The draft proposal defines "Legal Lot" as:

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

This draft definition states that a lawfully created lot or parcel will cease to be a discrete lot or parcel if the property lines are changed or the lot or parcel is divided. This cannot be what is intended, that a lot or parcel ceases to be "discrete" if it is lawfully altered. The Coalition suggests:

"A lawfully created lot or parcel. A lot or parcel lawfully created shall remain a discrete lot or parcel unless the lot or parcel lines are vacated and the lot or parcel is combined with another lawfully created lot or parcel. A lot or parcel shall remain a legal lot if property lines are changed or the lot or parcel further divided as provided by law."

### **b. 13.020 Legal Lot Determinations.**

The draft proposal defines "Legal Lot Determination" as:

"A legal lot determination by the Director is considered final when it is made and noticed pursuant to LC 14.100 and shall occur when:

"1. An application is submitted pursuant to LC 14.050 for a legal lot determination on a lot or parcel resulting from a property line adjustment; or

"2. If notice is requested by the property owner for any legal lot determination, upon submitting an application pursuant to LC 14.050."

The draft language "[a] legal lot determination . . . is considered final when it is made and noticed" does not comply with ORS 215.416(11)(a)(C), which requires that a decision not become final until the period for filing a local appeal has expired.

The meaning of subsection 2 is not clear. It may be that what is intended in subsections 1 and 2 is that a legal lot determination requires the filing of an application, whatever the reason for the legal lot determination. The Coalition suggests:

"A legal lot determination is a land use decision made by the Director pursuant to LC 14.100.

"1. A property owner may file an application for a legal lot determination pursuant to LC 14.050.

"2. A legal lot determination by the Director is considered final when the period for filing an appeal has expired."

## **2. The draft proposal fails to satisfactorily address legal requirements for lot-line adjustment procedures.**

State law requires that local governments institute procedures for adjusting property lines. If a local government fails to adopt property line adjustment procedures that meet statutory requirements, the local government is required to use the replatting procedures of ORS 92.180 and 92.185.

ORS 92.190 provides, in relevant part:

“(3) The governing body of a city or county may use procedures other than replatting procedures in ORS 92.180 and 92.185 to adjust property lines as described in ORS 92.010(11), as long as those procedures include the recording, with the county clerk, of conveyances conforming to the *approved property line adjustment* as surveyed in accordance with ORS 92.060(7).” (Emphasis added.)

Thus a local government’s procedures must include an approval process, which necessarily includes a review and decision-making process. Case law has established that a lot-line adjustment is a land use decision requiring a land-use decision-making process, including notice to nearby property owners. *Warf v. Coos County*, \_\_ Or LUBA \_\_ (LUBA No. 2002-087, January 7, 2002).

The process envisioned by the draft proposal is inadequate because it fails to establish a property line adjustment process that meets the statutory requirements. ORS 92.190 requires that procedures include 1) the recording of deeds reflecting 2) an *approved* property line adjustment. In the legal lot determination process, no “approved property line adjustment” is *ever* recorded; the property line adjustment is approved only after the recording of the adjustment. The legal lot determination process therefore does not meet the requirements of ORS 92.190 and cannot serve as a property line adjustment process or as a process to recognize and approve previously executed property line adjustments.

Lane County has no procedures for property line adjustments. Therefore Lane County is currently required to use the replatting procedures of ORS 92.180 and ORS 92.185 to accomplish and approve property line adjustments.

The draft proposal should be amended to specifically include property line adjustment procedures consistent with ORS 92.180 and 92.185 or, alternatively, with ORS 92.190.

Thank you for consideration of these comments.

Lauri Segel  
Lane County Planning Advocate, 1000 Friends of Oregon

Bob Emmons  
President, LandWatch Lane County

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From: Eben Fodor [fodor@efn.org]  
Sent: Monday, January 19, 2004 11:29 AM  
To: Steve.HOPKINS@co.lane.or.us  
Subject: Comments on Proposed Legal Lot Notification

Categories: NoHTML  
To: Steve Hopkins

The proposed definitions for Legal Lot and Legal Lot Determination are both circular. As such, they are not helpful. They should either state criteria for a legal lot or should reference the applicable criteria in Lane Code.

Eben Fodor  
\*\*\*\*\*

Eben Fodor  
Fodor & Associates  
Community Planning Consulting  
394 East 32nd Ave  
Eugene, OR 97405  
541-345-8246  
www.FodorandAssociates.com  
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From: Larry Olson [larry@olsonandmorris.com]  
Sent: Monday, January 26, 2004 8:22 AM  
To: HOPKINS Steve P  
Subject: Re: legal lot notification

Steve: Thanks for sending the information on Legal Lot Notification. I think this goes along with the earlier recommendation of the task force. I'm not sure, but I don't see anything in the proposal which makes it a Land Use Decision, subject to appeal. At present there is no method to appeal a decision made by staff. Is this something that we can expect in the future?

Thanks again for the information.

Larry Olson  
February 6, 2004

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From: Anne C. Davies [acdavies@qwest.net]  
Sent: Friday, February 06, 2004 11:43 AM  
To: steve.hopkins@co.lane.or.us  
Subject: February 17 planning commission meeting

Dear Steve:

I am assisting Norm Maxwell in tracking the work the county is doing on the property line adjustment procedures. As you may be aware, he is also concerned with the county's policy regarding the division of properties by an intersecting road, and has requested that that issue be included in the county's considerations. Please include this e-mail as a written comment, and add my name to any notice list that you may have on this matter.

Can you please e-mail me a copy of the February 17th Agenda? Also, is this to be a public hearing where an opportunity for public testimony is provided? Thank you.

Sincerely,

Anne C. Davies

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From: Lapinebsezell@aol.com  
Sent: Friday, February 06, 2004 1:58 AM  
To: steve.hopkins@co.lane.or.us  
Cc: Lapinebsezell@aol.com  
Subject: (no subject)

Categories: NoHTML  
February 6, 2004

To Steve Hopkins  
Lane County Planner

RE: Legal lot verifications

I understand that you are delegated to receive input from the public regarding legal lot verifications and set up policy meetings for future legal lot processing.

The first item on my list of concern regarding legal lot verification by Planning staff is the approval of legal lots of an area size that will not support a home. That is there is not enough area for a well, house and septic drain field.

I am familiar with a recent approval planning staff for Derek Jeros off of Fox Hollow Road that would not have a useable area of a garage after setbacks were applied!

The legal bases of a legal lot was that they would support a building permit prior to the time of the adopted county wide zoning plan. So there needs to be acceptable area for a legal lot. Otherwise any size of area of perhaps 10 square feet could be a legal lot if area large enough to support building a home is not the standard.

Next, planning staff have approved legal lot verifications for a property where a public road crosses the property. Where there was a tract of land with a county road easement established, for example in 1905, the Planning staff would approve that the road now created two legal lots. One legal lot was approved on each side of the road.

This action is in conflict with Oregon Subdivision control law as illustrated in part of a letter to the Board of Commissioners I recently wrote to them, as follows:

“(1) County Planning staff, without doubt, are aware of the recent land use actions surrounding Fire Road that contains information where Lincoln County, just like Lane County, had a codified process to recognize legal lots. The problem comes when Lincoln County applied that process to allow a public road to divide property and to create legal lots on each side of the road!

One has only to read the contents of a Commission Enforcement Order letter dated February 9, 1999 from the Oregon Department of Land Conservation and Development to the Director of Lincoln County Planning Division. The letter provides that “Lincoln

County routinely regards a parcel that is divided by a public road as two legal parcels and discrete parcels. ...The petitioner and the department asserted that this practice is unlawful since ORS 92.010(7) (d) clearly provides that "any property divided by sale or grant of property for state highway, county road, city street or other right of way purposes shall continue to be considered a single unit of land,," Please see Attachment "H" pages 1 -5 for the letter from DLCD. "

Also, I wrote in the same letter :

"(2) In the same Lane County Planning land use action file along Fire Road is a similar decision by Lane County Hearing Official like DLCD against Lincoln County. County Hearing Official Gary Darnielle provided a decision to Lane County Planning Department regarding the same issue of whether a county road divides a property into two legal lots dated March 9, 2000. His decision, regarding the legal lot issue, is within a comprehensive 2 ½ page letter dated March 9 that clearly concludes that the county road does not divide property and does not create legal lots. "

I urge you to review the letter as noted by the county's Land Use Hearings Official. It is in the Fire Road File.

I am also supportive of the two motions by Mike Evans as a member of the LMD Task Force for the LMD Division. Briefly, Mr. Evans motions elevate approved legal lot determinations similar to any land use action that requires public notice.

I urge you to set new standards for minimum size of legal lots and immediately stop approval of legal lots on each side of a public or county road created by an easement.

Thanks you. I wish I could provide you with a more detailed letter but I just found out today that Friday is the last day for input from the public.

K. Robert Ezell (retired County surveyor)  
2852 Wingate St  
Eugene , Or.

**From:** Lapinebsezell@aol.com  
**Sent:** Friday, February 06, 2004 1:00 PM  
**To:** Steve.HOPKINS@co.lane.or.us  
**Subject:** Re: legal lots

**Categories:** NoHTML

Steve, thanks for your attention to my letter to you regarding legal lots and concern of some past actions by county planning staff as noted.

In reading my letter sent to you early this morning I left out that very small area size of so called "legal lots" approved by planning staff were then property line adjusted.

Please forward the amended letter I am sending to you to the agency set up to review legal lots.

Thanks Bob

February 6, 2004

To Steve Hopkins  
 Lane County Planner

RE: Legal lot verifications (amended Feb 6 1:00 pm)

I understand that you are delegated to receive input from the public regarding legal lot verifications and set up policy meetings for future legal lot processing.

The first item on my list of concern regarding legal lot verification by Planning staff is the approval of legal lots of an area size that will not support a home. That is there is not enough area for a well, house and septic drain field.

I am familiar with a recent approval planning staff for Derek Jeros off of Fox Hollow Road that would not have a useable area of a garage after setbacks were applied! This very small triangle snippet of land was approved as a legal lot and was then "property line adjusted to a twenty acres parcel of land! So it demonstrates that county planning staff will approve any size area of land as a legal lot if it has a deed that shows it existed. I believe this is not by legal terms a legal lot. If it is then any size area of a land that can be shown it was created by some deed that did not violate land use at the time of creation would be a legal lot according to county planning staff past actions!

The legal bases of a legal lot was that they would support a building permit prior to the time of the adopted county wide zoning plan. So there needs to be acceptable area for a legal lot.

Otherwise any size of area of perhaps 10 square feet could be a legal lot if area large enough to support building a home is not the standard.

Next, planning staff have approved legal lot verifications for a property where a public road crosses the property. Where there was a tract of land with a county road easement established, for example in 1905, the Planning staff would approve that the road now created two legal lots. One legal lot was approved on each side of the road.

This action is in conflict with Oregon Subdivision control law as illustrated in part of a letter to the Board of Commissioners I recently wrote to them, as follows:

“(1) County Planning staff, without doubt, are aware of the recent land use actions surrounding Fire Road that contains information where Lincoln County, just like Lane County, had a codified process to recognize legal lots. The problem comes when Lincoln County applied that process to allow a public road to divide property and to create legal lots on each side of the road!

One has only to read the contents of a Commission Enforcement Order letter dated February 9, 1999 from the Oregon Department of Land Conservation and Development to the Director of Lincoln County Planning Division. The letter provides that “Lincoln County routinely regards a parcel that is divided by a public road as two legal parcels and discrete parcels. ... The petitioner and the department asserted that this practice is unlawful since ORS 92.010(7) (d) clearly provides that “any property divided by sale or grant of property for state highway, county road, city street or other right of way purposes shall continue to be considered a single unit of land,” Please see Attachment “H” pages 1 -5 for the letter from DLCD. “

Also, I wrote in the same letter :

“(2) In the same Lane County Planning land use action file along Fire Road is a similar decision by Lane County Hearing Official like DLCD against Lincoln County. County Hearing Official Gary Darnielle provided a decision to Lane County Planning Department regarding the same issue of whether a county road divides a property into two legal lots dated March 9, 2000. His decision, regarding the legal lot issue, is within a comprehensive 2 ½ page letter dated March 9 that clearly concludes that the county road does not divide property and does not create legal lots. “

I urge you to review the letter as noted by the county’s Land Use Hearings Official. It is in the Fire Road File.

I am also supportive of the two motions by Mike Evans as a member of the LMD Task Force for the LMD Division. Briefly, Mr. Evans motions elevate approved legal lot determinations similar to any land use action that requires public notice.

I urge you to set new standards for minimum size of legal lots and immediately stop approval of legal lots on each side of a public or county road created by an easement.

Thanks you. I wish I could provide you with a more detailed letter but I just found out today that Friday is the last day for input from the public.

K. Robert Ezell (retired County surveyor)  
2852 Wingate St  
Eugene , Or.

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LAND PLANNING CONSULTANTS  
1071 HARLOW ROAD  
SPRINGFIELD OR 97477

Phone 541-726-8523

Date: February 17, 2004

To Steve Hopkins

From: Mike Evans, Land Planning Consultants

RE: Consideration of proposed code revisions for property line adjustments

I will not be able to attend the meeting tonight but would like to forward some brief comments for the Planning Commission's consideration. I support the code amendments as proposed.

I was a member of the LMD Task Force that recommended that the Board adopt code amendments to make property line adjustments a land use decision.

This issue occupied a considerable amount of the task force time. Some members were reluctant to have the County adopt additional regulations which would require more time for approvals and cost landowners more money. Other members felt strongly that property line adjustments were land use decisions that should be noticed to adjacent neighbors.

Ultimately, the large majority if not all of the task force members agreed to forward a recommendation to the Board to provide notice for property line adjustments and to allow landowners to have notice provided for any legal lot determination at the option of the property owner.

Our recommendation was to keep the code revisions simple for the single purpose of providing notice to the neighbors of property line adjustments and providing opportunity for public input.

I have shared this issue with other consultants and attorneys who are generally agreeable to the code revisions so long as they are limited to those currently proposed. I plan to provide testimony at the Board of Commissioners hearing on this matter.

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From: Norm\_Maxwell@or.blm.gov  
 Sent: Wednesday, December 31, 2003 12:14 PM  
 To: steve.hopkins@co.lane.or.us  
 Subject: Legal Lot/Lot Line adjustment

Steve, Thank you for sending me the draft on legal lot determination. I think we need to focus on the Lane County lot line adjustment as the problem. The legal lot determination is more like a symptom. The definition of a lot line adjustment printed in the draft is pretty straightforward and obvious but we have still had all sorts of creativity when it comes to a LC lot line adjustment. Please include this as input.  
 More WILL follow. Thank you, N

As the new year begins, it is time for the five Lane County commissioners to implement the recommendations of the LC Land Management Division Task Force that were formulated in 02 & 03.

The LMD Task Force was composed of more than a dozen city & county agency officials, developers, realtors & their consultants, as well as private citizens who attended the 13 meetings of the TF.

The #1 recommendation of the task force was to make the Lane County lot line adjustment an official land use decision, subject to notice to, and challenge from impacted adjacent land owners.

The Lane County lot line adjustment has long been abused as a tool to create multiple buildable lots out of one in our rural lands. State law defines a lot line adjustment as "the movement of a (as in one) boundary line, common between two properties." County land use policy may not be less restrictive than Oregon land use law.

There have been two recent major legal opinions rendered concerning lot line adjustments that clearly indicate that Lane policy is in error as to lot line adjustments. One by the state Land Use Board of Appeals (*Warf v Coos County*) which makes it clear that a lot line adjustment process moves ONE line at a time and notifies adjacent land owners, and the second by Oregon's Court of Appeals (*Hammer v Clackamas County*) which amplifies the LUBA opinion and involves the county surveyor signing off on the lot line adjustment as well. I am no lawyer but you can look these cases up on the Oregon LUBA and Court of Appeals web pages and decide for yourself.

The Lane County lot line adjustment is currently an amorphous process that can secretly move a tax lot to where no part of its new position touches any part of its original location. The LLA can simultaneously shrink the lot below existing zoning and is often used to cut off an existing house from the original acreage so a developer can sell the house on a substandard lot and create more building sites on the remaining land.

Surrounding land owners are not currently informed of these lot line adjustments. If you should somehow discover one next door, our Land Management Division will inform you that the process is "preliminary" and can't be challenged. The next stage is "final" and that can't be challenged either. The LMD can and has provided a county staff lawyer to defend the developer's agenda at no charge to the developer.

I personally took on what I considered an illegal development next door to me that involved two Lane County lot line adjustments. Not only did the two "adjustments" clearly violate state law, they even violated Lane land use policy. At the Land Use Board of Appeals, the combined

lawyers of the developer and the county maintained that the fact that I hadn't discovered unnoticed (as in unannounced) land use moves in time as a valid argument. I was amazed that the LUBA panel of three unanimously bought this and other specious reasoning and found for the developer and county.

Oregon's Court of Appeals reversed LUBA's opinion on the first of seven highly questionable aspects in Maxwell v Lane County and remanded it to LUBA who promptly hot potatoed it back to the Lane County hearings official who originally denied and then blessed it. The developer, Lane County and myself all requested the three C of A judges to render opinions on the remaining half dozen issues in Maxwell v Lane County & Developer but they declined to do so.

If we had continued to take one element at a time of Maxwell through the legal system, it could have taken decades and cost me hundreds of thousands of dollars to prosecute. Since I was now in a position of strength, I was able to negotiate with the developer and he reverted the zoning of his holdings back to the original 10 acre minimum and eliminated the worst lot line adjustment so that the lot in question grew from two acres to its original 12 acre configuration.

This aforementioned lot line adjustment was so shaky that the developer tried to insert an intermediate lot line adjustment into the records after he no longer owned the property. Our LMD helped him do it.

The young couple who bought the place refused him permission to tinker with the lines and deed but he did it anyway without telling them. This is hard to believe but I can provide documentation of this if anybody wants to see it.

The point is that Lane County's Land Management Division needs to get in compliance with Oregon land use law. Lane County doesn't have different traffic or drug enforcement "policies" than Oregon. Why then are our land use policies so completely alien to state law? I call upon our Board of County Commissioners to do the right thing and implement a new lot line adjustment policy that defines a lot line adjustment as the movement of ONE common boundary line between two tax lots, subject to notice to, and challenge from adjacent land owners and requiring the signature of the county surveyor.

Norm Maxwell  
79550 Fire Road 97451

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From: Norm\_Maxwell@or.blm.gov  
Sent: Thursday, January 08, 2004 11:44 AM  
To: kent.howe@co.lane.or.us; Steve.hopkins@co.lane.or.us;  
don.hampton@co.lane.or.us  
Subject: legal lot ver/lot line adjust

Kent, Upon studying the Draft for Legal Lot Notification, I think we can agree that it should work as long as we adhere strictly to the included definition to Property Line Adjustment: "The relocation of a common property line between two abutting properties."

Obviously, an average person of reasonable intelligence would assume that we are talking about a (one) straight line--the shortest distance between two points. Of course it is obvious that the recent Oregon LUBA and Court of Appeals opinions of Warf v Coos County & Hammer v Clackamas County need to be incorporated into the Lane County lot line adjustment process.

I am not a lawyer but from what I understand of the Warf opinion by LUBA it is clear to me that a property line adjustment moves ONE line at a time and makes it an official land use decision-- as such noticed to, and subject to challenge from, surrounding land owners. The very same three LUBA panelists who heard Maxwell v Lane County & Gorham and blessed the two extremely irregular LC "lot line adjustments" involved in the attempted rezone at the end of Fire Road, completely changed their perspective from Maxwell to Warf.

I remind you that the "property line adjustments" used at the end of Fire Road were so bad that the developer actually inserted an after the fact intermediate property line adjustment on one of the lots after he NO LONGER owned it and against the expressed wishes of the Bryants to whom he has sold the 2 acre remains of the 12 acre original lot. This in 10 acre zoning no less.

Hammer v Clackamas County, to me, amplifies Warf and includes the county surveyor signing off on the proposed "property line adjustment." I hope that we can include these elements into Lane County's interpretation of the property line adjustment. It is clear to my mind that we need to absolutely clarify the property line adjustment before we can successfully make the legal lot verification a land use decision, subject to notice to, and challenge from, citizens of Lane County.

Then, too, we need to ensure that noticing happens automatically to surrounding land owners and is not dependent on the surrounding lot owners applying for the information. The resulting legal lot verification/property line adjustments need to be able to withstand the hard light of day on their own and comply with Oregon land use law. Please respond and tell me if I grasp the LMD's intention on this correctly.

Steve, please file this under input for the Bof CCs et al to examine.

Norm Maxwell

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From: Norm\_Maxwell@or.blm.gov  
Sent: Friday, January 09, 2004 7:40 AM  
To: Steve.hopkins@co.lane.or.us  
Subject: Fw: LMD TF recommendation re lot line adj

Hi Steve,

I think what we should be after is an official process for lot-line adjustments; recording a deed at the county recorder would no longer be sufficient. This would eliminate later questions concerning the propriety of any lot-line adjustment. I don't think the draft language is very clear. It seems to say that a lot or parcel will cease to be a discrete lot or parcel if a legal lot line adjustment is made, which is nonsensical. I think it would be a very good thing for a lot or parcel to not be recognized as a legal lot or parcel if an illegal lot line adjustment was made. But the language should clearly say so.

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

Does this mean a lawfully created lot or parcel is no longer a lawfully created parcel if a lot line is adjusted as provided by law, but remain a discrete lot or parcel? Does it cease to remain a discrete lot or parcel if a lot line is adjusted as provided by law, legal or otherwise?

Please file this with the other input for the county commissioners et al,  
Norm

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From: Norm\_Maxwell@or.blm.gov  
Sent: Tuesday, January 20, 2004 9:53 AM  
To: steve.hopkins@co.lane.or.us  
Subject: lot line adjustment/legal lot verification

Steve, I have a wonderful idea! When it comes time for planning and the Board of CCs & Planning to hammer out a solution to the Lane Co lot line adjustment/legal lot verification problem, let's use the current WW Jackson Road mess as practical application! It contains lot line adjustment problems, legal lot verification problems & the tired old "road dividing tax lots into two" problem. It would cease to be hypothetical and the Jackson Road problem will have to be fixed anyway. Please submit this in the LMD TF implementation comments file.  
Norm

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From: Norm\_Maxwell@or.blm.gov  
Sent: Friday, January 23, 2004 8:01 AM  
To: kent.howe@co.lane.or.us; steve.hopkins@co.lane.or.us  
Cc: bobby.green@co.lane.or.us; bill.dwyer@co.lane.or.us;  
peter.sorenson@co.lane.or.us; anna.morrison@co.lane.or.us;  
don.hampton@co.lane.or.us  
Subject: LMD TF notification.

Kent, Cheryl Neu was not the only member of the LMD TF who was left out of the loop as to notification of the draft lot line adjustment/legal lot ver draft. I haven't yet heard from Larry Olson yet but I didn't see his name at the head of the list either. Clearly we need to extend the input time after making sure everybody on the TF gets a chance to examine the draft. On a different note, regarding our chat yesterday, I examined Gary Darnielle's "reconsidered" decision on the Fire Road story and as near as I can tell (it is not written in plain English) he doesn't revoke his earlier decision against road dividing one lot into two--rather he insulates the FR instance from "collateral attack." Looking at the definition of collateral attack appended to Mr Ezell's impressive opus:

Collateral Attack. With respect to a judicial proceeding, an attempt to avoid, defeat or evade it, or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking it.....(more follows)

I plan to talk to Anne Davies about this. Anne was not only the original lawyer on the Fire Road case, but she participated in the 99 Lincoln County enforcement action thing cited by Mr Ezell. I think we need to include the road dividing tax lots system in the upcoming CC work session with legal lot verification & lot line adjustment. Norm

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March 9, 2000

Mr. Kent Howe, Director  
Lane County Land Management Division  
Public Service Building  
125 E. 8th Ave.  
Eugene, OR 97401

Dear Mr. Howe:

Please find the attached Lane County Hearings Official's decision denying the Gorham request (PA 98-1633) for the rezoning of tax lot 905, assessor's map 20-05-22 from RR-10 to RR-5.

Sincerely,

  
Gary L. Darnielle  
Lane County Hearings Official

Gary Darnielle binds AGAINST the Road  
dividing one lot into two AND the Lane County  
Property line adjustment