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

MIKE LECKIE,
Petitioner,

vs.

LANE COUNTY,
Respondent,

and

LANDWATCH LANE COUNTY,
Intervenor-Respondent.

LUBA No. 2024-024

FINAL OPINION
AND ORDER

Appeal from Lane County.

Zack P. Mittge filed the petition for review and reply brief and argued on behalf of petitioner.

No appearance by Lane County.

Sean T. Malone filed the intervenor-respondent's brief and argued on behalf of intervenor-respondent.

RYAN, Board Member; ZAMUDIO, Board Chair; RUDD, Board Member, participated in the decision.

AFFIRMED 10/10/2024

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

Opinion by Ryan.

NATURE OF THE DECISION

Petitioner appeals a hearings officer decision concluding that petitioner's property is not a lawfully established unit of land.

FACTS

Petitioner is the owner of approximately 40 acres of property zoned Impacted Forest (F-2) that includes a dwelling. Petitioner acquired the property in 1989. In 2023, petitioner applied to the county to verify the property's status as a "lawfully established unit of land," pursuant to Lane Code (LC) 13.140. We set out LC 13.140 below. As relevant here, a "lawfully established unit of land" includes a unit of land created (1) "[i]n compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations, or" (2) "[b]y deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations." LC 13.030(3)(n)(ii)(aa), (bb) (implementing and adopting verbatim ORS 92.010(3)(a)(B)'s definition of the same).

The planning director concluded that the property was created by a 1989 deed from the then-owner to petitioner that was not in compliance with the county's partition ordinance and regulations, which the county first adopted in 1975 and required approval prior to partitioning property. Petitioner appealed that decision to the hearings officer, who adopted findings concluding that the property is not a legal lot because it was created by deed in 1989 without

compliance with applicable partition ordinance and regulations. This appeal followed.

BACKGROUND

We begin by setting out the applicable statutes and LC provisions before we turn to a description of the actions that have affected the property between 1912 and the date petitioner filed its application in 2023.

A. Applicable Laws

LC 13.030(3)(n) defines "lawfully established unit of land" as:

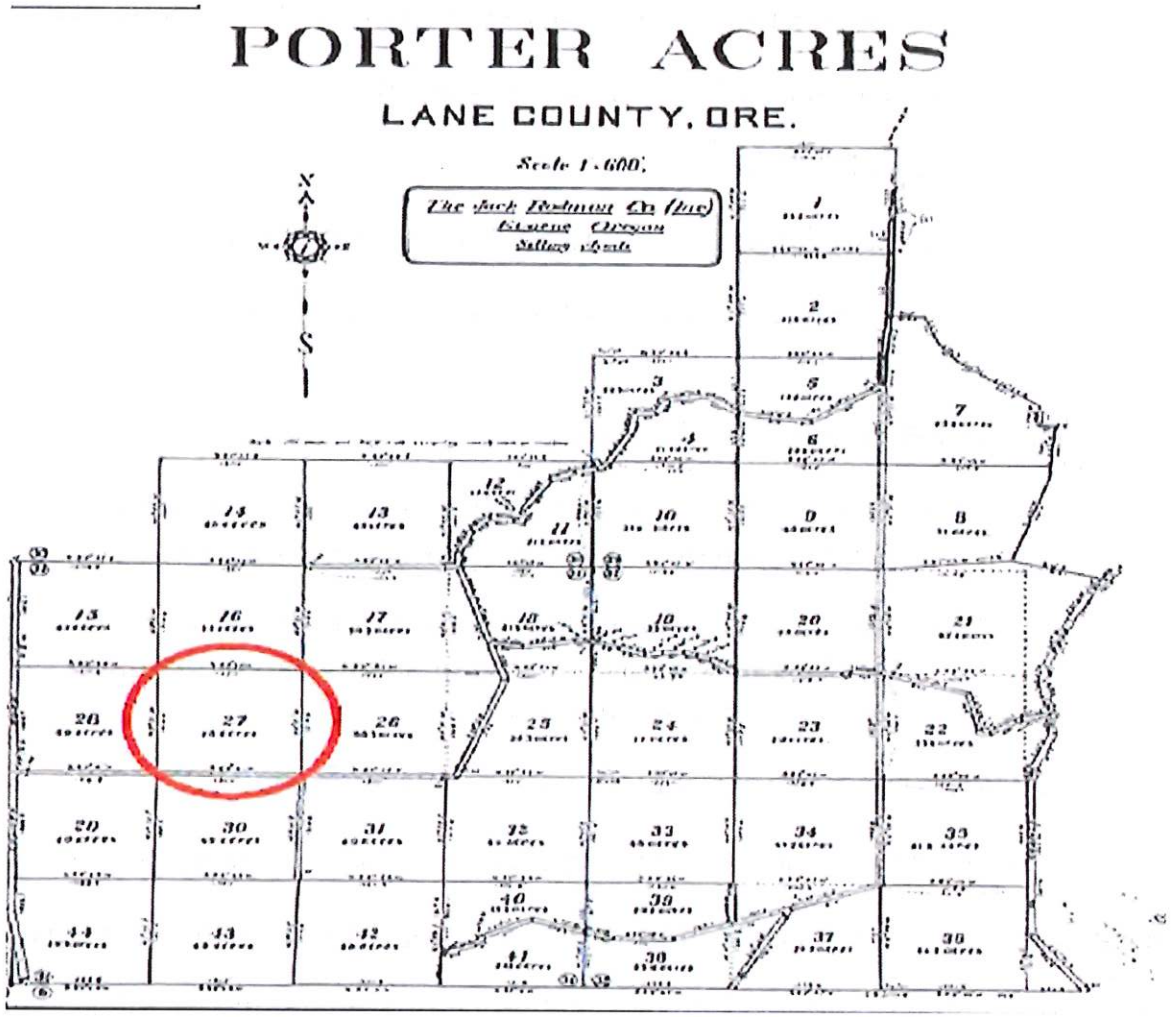
> "(i) A lot or parcel created by filing a final plat for subdivision or partition; or
>
> "(ii) Another unit of land created:
>
> "(aa) In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations; or
>
> "(bb) By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations."

As noted, ORS 92.010(3)(a)(B) includes the same definition.

LC 13.033(3)(q) and ORS 92.010(4) define "lot" as "a single unit of land that is created by a subdivision of land." LC 13.140(3) provides that "[a] legal lot verification will be approved if the subject property is a lawfully established unit of land as defined by this chapter."

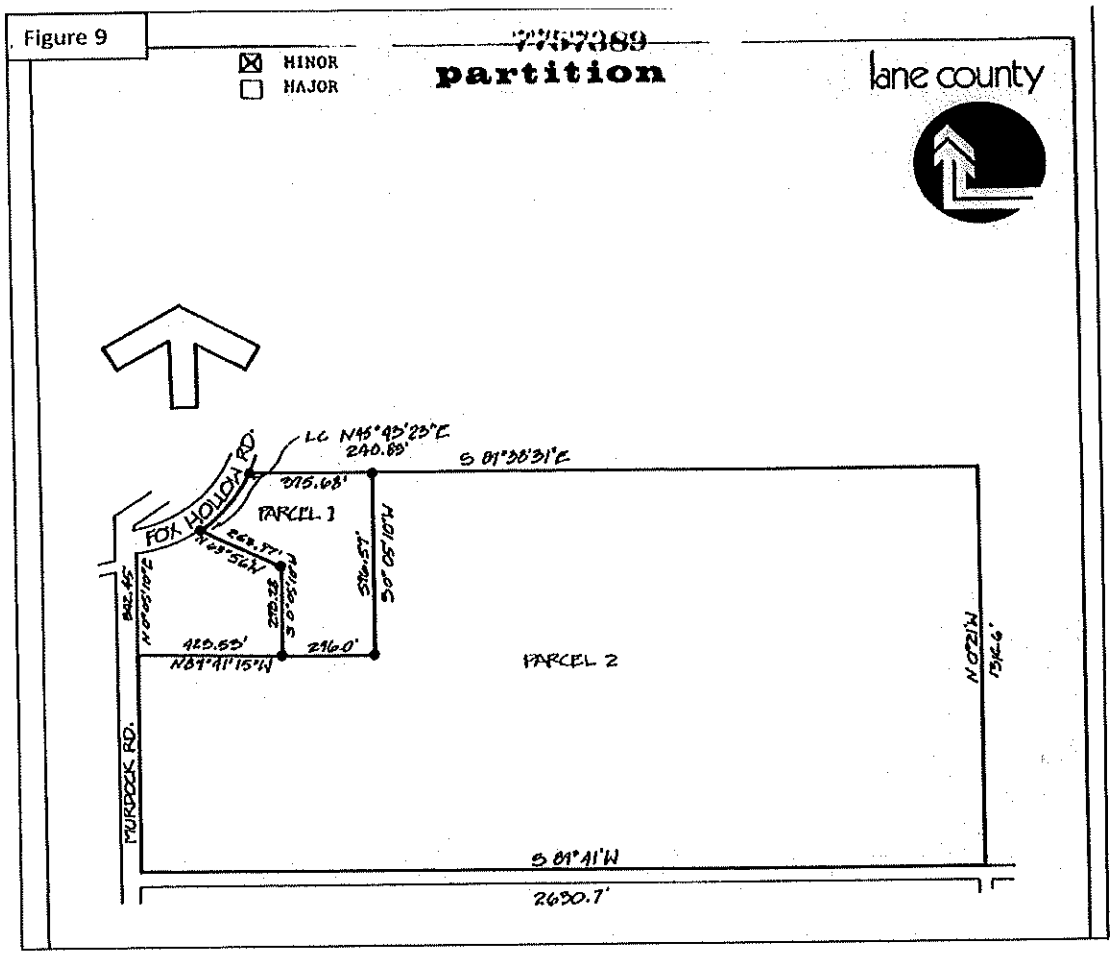
B. Prior Actions Affecting the Property

Petitioner's property is located in an area of land that was originally platted as Porter Acres Subdivision in 1912 (1912 Plat). The 1912 Plat created Lot 27, a 40-acre parcel (1912 Lot 27) and Lot 28, a 40-acre parcel (1912 Lot 28).



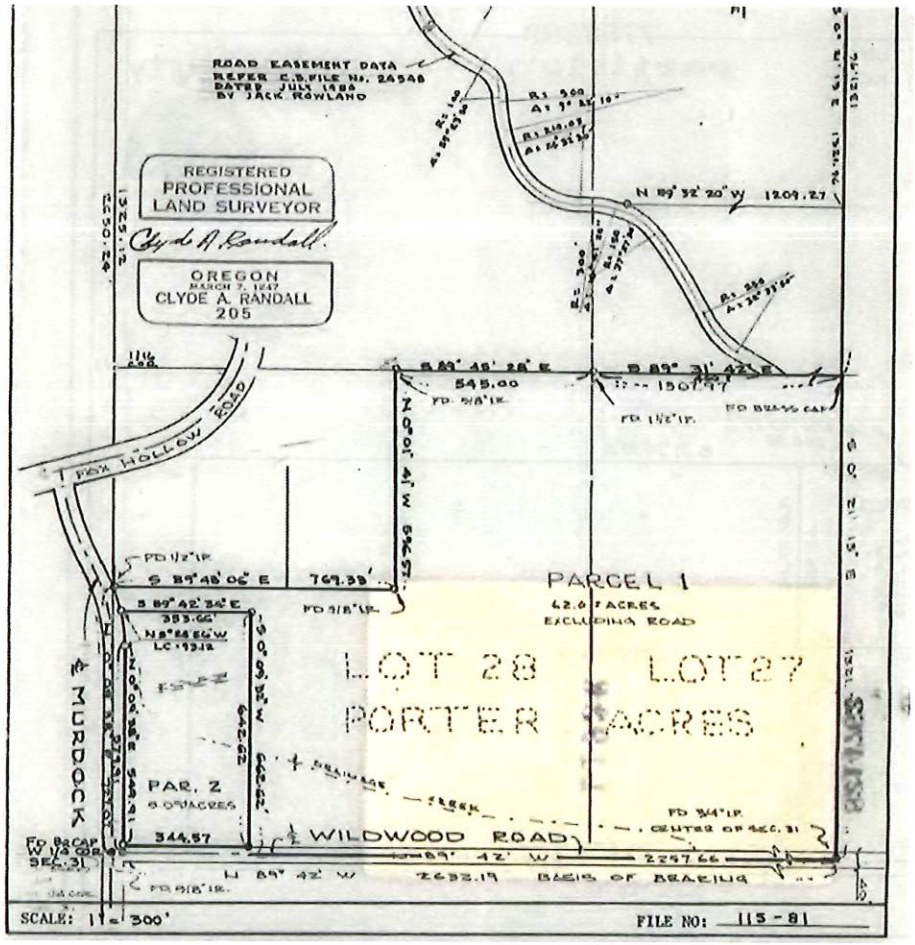
Record 9.

In 1977, the owner of 1912 Lot 27 and a portion of 1912 Lot 28 applied for a partition of those two properties to create three new parcels: 1977 Parcel 1, 1977 Parcel 2, and a third, unnumbered, parcel. Record 5.



Record 10. The county approved the partition (1977 Partition). Record 252.

In 1981, the owner of 1977 Parcel 2 applied to further partition 1977 Parcel 2 to create two new parcels: a 62.6-acre parcel that included all of 1912 Lot 27 and a portion of 1912 Lot 28 (1981 Parcel 1), and an approximately five-acre parcel that was entirely located in 1912 Lot 28 (1981 Parcel 2):



Record 5, 11. As shown above, the 1981 Partition identified historic 1912 Lot 27 and 1912 Lot 28 in proposed Parcel 1, in shadowed font. The county approved the partition (1981 Partition) and a boundary survey was recorded in 1982 to complete the partition. Record 11, 62.

In 1984, the county applied F-2 zoning to 1981 Parcel 1. Record 245. The F-2 zone required a minimum parcel size of 80 acres for new dwellings. Record 256.

In 1989, Loomis executed two deeds: a 40-acre portion of 1981 Parcel 1 to petitioner, and a 24.3-acre portion of 1981 Parcel 1 to Loomis and Loomis, husband and wife. Record 255, 209.

In 1992, the owners of the 24.3-acre portion of 1981 Parcel 1 sought advice from the county regarding whether their property "qualifie[d] as a legal lot[]" (1992 LLV). Record 52. An associate planner concluded that their property was not a legal lot. Record 50. In 1993, the owners of that 24.3-acre parcel applied to partition that property to create two new parcels from that 24.3-acre parcel. The county approved the partition (1993 Partition). Record 209.

C. The County's 2024 Decision

The planning director denied petitioner's application because they concluded that the 1977 Partition vacated the lot lines of 1912 Lot 27 and a portion of 1912 Lot 28, and reconfigured those lots into 1977 Parcel 1 and 1977 Parcel 2. The planning director further concluded that the 1981 Partition further reconfigured 1977 Parcel 2 into 1981 Parcel 1 and 1981 Parcel 2. Accordingly, the planning director concluded, the 1989 deed from Loomis to petitioner of a 40-acre portion of the approximately 62.6-acre 1981 Parcel 1 created a unit of land that was not in conformance with applicable partition regulations at the time. Record 256.

The hearings officer affirmed the planning director's decision, adopting three pages of findings explaining their decision, at the end of which they concluded:

> "The subject property is not a lawfully established unit of land because the effect of the 1977 partition was to vacate the property's boundaries, which terminated the subject property's independent status as a lawful unit of land. The 1993 partition and plat could not and did not re-create those boundaries or re-establish the subject property as a lawful unit of land. To the extent that there were conveyances after the 1977 partition that described the subject property as a discrete unit of land, those conveyances would have been unlawful. The [p]lanning [d]irector's decision is affirmed." Record 8.

The hearings officer relied on the Court of Appeals decision in *Weyerhauser Real Estate Develop. v Polk County*, 246 Or App 548, 267 P3d 855 (2011) to conclude that the 1977 Partition vacated the previous lot lines for 1912 Lot 27. Record 6. We discuss *Weyerhauser* later in this opinion. The hearings officer also incorporated the planning director's analysis in a February 29, 2024, staff report rejecting petitioner's argument that the 1993 Partition "re-created" or "re-established" 1912 Lot 27. Record 8, 241-42.

FIRST ASSIGNMENT OF ERROR

In the first assignment of error, petitioner argues that the hearings officer improperly construed LC 13.140(3) and LC 13.030(3)(n)(i) when they concluded that petitioner's property was created in 1989 by deed without compliance with the applicable land division ordinance and therefore is not a lawfully established unit of land. ORS 197.835(9)(a)(D) provides that a LUBA will reverse or remand a local government decision that "improperly construe[s] the applicable law." In a portion of the assignment of error, petitioner also argues that the hearings officer's findings are inadequate. *Sunnyside Neighborhood v. Clackamas Co.*

Comm., 280 Or 3, 21, 569 P2d 1063 (1977) (explaining that adequate findings are not subject to a set legalistic form, but a clear statement of what the decisionmaker believes to be relevant and important facts upon which to base its decision).

According to petitioner, nothing in the express language of those LC provisions supports a conclusion that a lot created by subdivision prior to the enactment of ordinances and regulations governing land divisions that is later reconfigured does not remain a lot and therefore a lawfully established unit of land. Petitioner maintains that because it is undisputed that 1912 Lot 27 was created in 1912 when the Porter Acres Subdivision was platted, under the plain language of LC 13.140(3)(n)(i) petitioner's application must be approved.

As explained above, the hearings officer concluded that the boundaries of 1912 Lot 27 and 1912 Lot 28 were eliminated by the approved, final 1977 Partition, which partitioned combined 1912 Lot 27 and 1912 Lot 28 to create a new approximately 67-acre parcel (1977 Parcel 2) and a new 15-acre parcel (1977 Parcel 1). After that partition, the hearings officer concluded, 1912 Lot 27 ceased to exist.

Intervenor-respondent (intervenor) responds, and we agree, that the hearings officer correctly interpreted the LC provisions that implement the statutes to conclude that petitioner's property was created by deed in 1989 without compliance with the applicable land division ordinance. That the property was a lawfully established unit of land (or "lot" as defined in LC

13.030(3)(q)) in 1912 when the Porter Acres Subdivision was platted does not mean that the county is required to ignore subsequent actions that combined that property with other property and then partitioned that combined property into new parcels with new boundaries. Accordingly, we agree that the hearings officer correctly interpreted the LC provisions that implement the statute to conclude that the property was created by deed in 1989 without compliance with the applicable land division ordinance.

Petitioner also attempts to distinguish the court's holding in *Weyerhauser*, arguing that the application at issue in *Weyerhauser* sought a property line adjustment. The hearings officer found that petitioner's application fell squarely within the holding in *Weyerhauser* and that the fact that the applicant in *Weyerhauser* sought property line adjustments, rather than legal lot verifications, was not a relevant distinction. Record 6-7. In *Weyerhauser*, the applicant applied to Polk County to adjust property lines among four lots that were originally created by a 1911 subdivision. LUBA and the Court of Appeals held that a recorded 1983 partition plat had the effect of vacating the preexisting lot lines created by the 1911 subdivision, even though the historic lots were shown as dashed lines on that 1983 partition plat. 246 Or App at 548; *see also Van Veldhuizen v. Marion County*, 26 Or LUBA 468, 472 (1994) (recording of partition plat to create a 110-acre parcel vacated pre-existing 50-acre and 60-acre parcels). We agree with the hearings officer and intervenor that *Weyerhauser* is directly on point.

Next, petitioner cites several cases that address the effect of a property line adjustment on whether a particular property was a lawfully established unit of land, and argues those cases support a decision that petitioner's property is a lawfully established unit of land. Petition for Review 9-12 (citing *Tarjoto v. Lane County*, 36 Or LUBA 645 (1999); *Bear Creek Corporation v. Jackson County*, 44 Or LUBA 685 (2003); and *Sarett v. Lane County*, 76 Or LUBA 308 (2017)). As intervenor explains in the Intervenor-Respondent's Brief, those cases involved whether prior *property line adjustments* of the properties at issue serve to vacate property boundaries for purposes of determining whether a lot or parcel was legally established. Intervenor-Respondent's Brief 9-12. ORS 92.010(12) defines "property line adjustment" to mean "a relocation or elimination of all or a portion of the common property line between abutting properties that does not create an additional lot or parcel." In a property line adjustment, common boundaries are reconfigured, but property lines are not vacated to create new properties. *See Meyer v. Jackson County*, 69 Or LUBA 299 (2014) (a relocation of a common boundary line between two platted lots in a subdivision was not a replat and did not require a replat). Differently, here, two separate approved partitions of property that included petitioner's property occurred that served to vacate prior property lines and create new lots.

Finally, petitioner argues that the hearings officer's findings are inadequate to explain their conclusion. As noted, the hearings officer adopted several pages of findings explaining their conclusion, and adopted a part of the analysis in the

February 29, 2024, staff report as their own. Record 4-8, 242-82. Petitioner makes no attempt to address any of those findings or explain why they are inadequate. We conclude the findings are adequate.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

In the second assignment of error, petitioner argues that the hearings officer improperly construed LC 13.030 when they concluded that the 1993 Partition did not "re-create" 1912 Lot 27 as a "parcel" as defined in LC 13.030(3)(t).[1] Petitioner also argues that the hearings officer failed to address that issue.

The hearings officer concluded that the 1993 Partition did not include petitioner's property, and therefore could not have "re-created" 1912 Lot 27 as a parcel or created a "remainder" parcel:

> "The appellant asserts that, notwithstanding arguments 1 and 2 above, 'Partition 93-P0404 're-created' Lot 27 as a 'parcel' by dividing Parcel 1 of Minor Partition M115-81 into three units of land,' thereby giving rise to the subject property anew. The evidence of the 1993 approval does not support this assertion, however, as: (1) the plan submitted with the 1993 partition application does *not* identify the subject property being part of the partition area – while the partitioned properties boundaries are drawn as solid lines, adjacent properties such as the subject properties are referenced only by dashed lines as being taxlotted [*sic*] properties *adjacent to* the

[1] LC 13.030(3)(t) defines "parcel" as "a single unit of land that is created by a partition of land."

parcel being partitioned; (2) both the application itself and the staff's analysis (as summarized in its report dated January 7, 1993) show that [c]ounty staff were asked to, and did, consider the partition to encompass only Tax Lots 201 and 400 on Assessor's Map 18-03-31-00, with no mention of Tax Lot 500 (the subject property); and (3) the subject property is also not included or referenced in the subsequently recorded Land Partition Plat 93-P0404.

"* * * * *

"The Hearings Official agrees with the [planning d]irector's [r]esponse in the February 29, 2024 staff report regarding the lack of relevance of the 1993 Partition to the legal status of the subject property and adopts that analysis as his own." Record 7-8 (emphasis in original).

The February 29, 2024, staff report explained:

"The appeal statement does not articulate the issue in detail; however, it appears to introduce the consideration that a 1993 partition creates a legal lot as a remainder of the partition. This staff report explains several reasons how current case law does not support this position.

"In summary of the facts, the subject property is fully outside of the 1993 partition plat area. No parcel or remainder is noted that encompasses the subject property. Additionally, the unlawful division that created the subject property in 1989 occurred several years prior to the partition plat (see Figure 15 of the decision).

"[Petitioner] provides no analysis regarding how the 1993 partition plat would have cured the unlawful division that had already occurred. To the extent that [petitioner] relies on this consideration, staff note that the [h]earings [o]fficial and Land Use Board of Appeals (LUBA) have consistently determined that the effect of an approval, verification, or validation of one property, or a portion of a broader property, in [*Wolcott v. Lane County*, 77 Or LUBA 165 (2918) (*Wolcott*), *Landwatch Lane County v. Lane County*, 80 Or LUBA 415 (2019) (*Doughty*), *Greene* (Planning Action File No. 509-PA20-05452), *Sikora* (Planning Action File No. 509-PA21-

05209), and *Miles* (Planning Action File No. 509-PA21-05832),] does not result in the automatic approval, verification, or validation of the remainder of the property. Such is the case here.

"* * * * *

"ORS 92.017

"To the extent that [petitioner] considers ORS 92.017 to have protected the subject property from unlawful division until a lawful division took place (as Lot 27 of Porter Acres), the [h]earings [o]fficial and LUBA have issued decisions/opinions contrary to this interpretation in multiple holdings, most notably in *Hines* (PA22-05203) and *Moolenijzer* (PA21-05452). See [*Doughty*, 80 Or LUBA 415]. In *Hines*, the [h]earings [o]fficial addressed a situation where the applicant of a legal lot verification argued that a property unlawfully created was later 'lawfully' created as a 'remainder' of an adjacent partition plat approval, even though the subject property was not included on the plat. The [h]earings [o]fficial found that the unlawful division cannot be ignored, *and that approval of an adjoining partition does not act to cure on the subject property.* In *Moolenijzer*, the [h]earings [o]fficial was clear that a subsequent lawful conveyance of part of a property does not serve to cure a previous unlawful conveyance of the parent property.

"Although the 1993 partition plat may have cured the lawful status of the parcels of that plat, to the west of the subject property, it did not cure the unlawful status of the subject property. The unlawful 1989 division rendered the subject property unlawful in its current configuration." Record 241-42 (emphasis added).

For the reasons explained in the hearings officer's decision and the Intervenor-Respondent's Brief, we agree that the hearings officer correctly construed LC when they concluded that the 1993 Partition did not "re-create" petitioner's property as a lawfully established unit of land, because the 1993 Partition sought and received approval to partition only the 24.3-acre portion of

1981 Parcel 1. Intervenor-Respondent's Brief 17-18; Record 224-239. We also conclude that the hearings officer's findings are adequate to explain their conclusion.[2]

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

Petitioner's third assignment of error argues that the hearings officer improperly construed unidentified LC provisions, and their decision is not supported by substantial evidence or adequate findings, when they concluded that the 1992 LLV did not establish that petitioner's property is a lawfully established unit of land. ORS 197.835(9)(a)(C), (D); *Sunnyside Neighborhood*, 280 Or at 21. According to petitioner, the county has previously determined in the 1992 LLV that petitioner's property was a lawfully established unit of land as of 1941. Petition for Review 25; Reply Brief 2-3. In support of their argument, petitioner cites the 1992 LLV and a 1992 letter from the land use consultant, who prepared the applications for the 1981 Partition and the 1993 Partition, to an associate county planner, that was introduced during the proceedings before the hearings

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[2] To the extent petitioner argues that petitioner's property is a lawful remainder of the 1993 Partition, we reject that argument. An unauthorized division of land does not create legal lots of record. *Yamhill County v. Ludwick*, 294 Or 778, 663 P3d 398 (1983); *Hartmann v. Washington County*, 36 Or LUBA 442, *aff'd*, 164 Or App 177, 991 P2d 65 (1999) (an illegal land division creates two new, undevelopable units of land rather than an undevelopable lot and a remainder lot).

officer. Record 218-19. That consultant's letter takes the position that petitioner's property is a legal lot. That consultant also provided a declaration to the hearings officer in the proceedings on petitioner's application in which they recounted a telephone conversation with the associate planner who authored the 1992 LLV in which the consultant states that the planner confirmed that "Lot 27 was an independent legal lot." Record 22. Petitioner takes the position in the petition for review that the 1992 LLV has decided that petitioner's property is a legal lot, and argues that the county may not now decide differently. Petition for Review 25-26 (citing *Gansen v. Lane County*, ___ Or LUBA ___ (LUBA No 2020-074, Feb 22, 2021).

The 1992 LLV includes the following statement:

> "Attachment 3 [is] the deed description card for [T]ax [L]ot 201 [a 24.3-acre portion of 1981 Parcel 2], indicates that it was part of what was originally platted as [L]ot 28 of Porter's Acres. Tax [L]ot 500 [petitioner's property] was originally platted as [L]ot 27, so *as of 1941* both were separate legal lots." Record 52 (emphasis added).

The hearings officer rejected petitioner's characterization of the legal effect of the 1992 letter from the land use consultant to the associate county planner and of the legal effect of the 1992 LLV, and concluded:

> "[Petitioner] refers to a letter dated September 11, 1992 from one Mike Evans to the [c]ounty, possibly written in response to a letter from the [c]ounty dated August 21, 1992. The subject matter of Mr. Evans's letter relates to the legal lot status of *Tax Lot 201 (the lot divided in the 1993 plat*), that mentions the subject property, and asks the [c]ounty to 'consider' a 'scenario' relating to the legal lot status of Tax Lot 201 and the subject property. However, there is no

> acknowledgement of or reference to that letter in the [c]ounty staff's analysis of the partition contained in its January 7, 1993 report, so that report cannot be considered to have either adopted or endorsed the 'scenario' proposed in the letter." Record 7 (emphasis added).

Intervenor responds that the hearings officer correctly concluded that the 1992 LLV had no effect on the matter before the hearings officer because the 1992 LLV related only to the 24.3-acre portion of 1981 Parcel 1 that was the subject of the request.[3] We agree that the 1992 LLV did not verify anything about petitioner's property, which was not the subject of the 1992 request for legal lot verification. Accordingly, the hearings officer correctly concluded that the 1992 LLV and any evidence relating to the 1992 LLV did not establish that petitioner's property is a lawfully established unit of land. The hearings officer's findings are adequate to explain this conclusion.

The third assignment of error is denied.

The county's decision is affirmed.

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[3] In 1992, the LC did not include a formal, codified legal lot verification procedure. *See Wolcott v. Lane County*, 77 Or LUBA 165, 176 (2018) (explaining that the county did not have a formal, codified legal lot verification procedure until 2004).