



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: March 20, 2024
Department: Public Works

Title: Consider accepting appeal of Hearings Officer decision Administrative Review Case 23-033/Bodunov

Agenda Planning Date: March 7, 2024 Management Update/Work Session Date: N/A Audio/Visual aids ☐
Time Required: 5 min Contact: Brandon Reich Phone: 503-566-4175

Requested Action: Staff recommends the board not accept the appeal of Hearings Officer decision Administrative Review Case 23-033/Bodunov

Issue, Description & Background: Prohar and Evdokia Bodunov applied for an administrative review to determine the number of legal lots on a track of approximately 26.65 acres in a TC (Timber Conservation) zone located in the 21000 block of Abiqua Rd NE, (T7S; R1E; Section 13D; Tax lots 300 and 500).
The Marion County Hearings Officer held a duly noticed public hearing on this application on January 4, 2024, and issued a decision determining that the property constitutes one legal parcel on February 8, 2024. The Hearings Officer's decision was appealed to the Board on February 22, 2024.
Because the appeal included no new evidence, no new argument, and isn't asking the board to make a policy interpretation, staff recommends the board not accept the appeal. The appellants appear to disagree with the conclusions the hearings officer drew from applicable laws.

Financial Impacts: None

Impacts to Department & External Agencies: None

List of attachments: Appeal, Hearings Officer Decision, Order

Presenter: Nicole Inman, Associate Planner

Department Head Signature:

BEFORE THE MARION COUNTY BOARD OF COMMISSIONERS

BODUNOV, PROHAR & EVODKIA,

Plaintiff,

Case No. AR23-033

CLERKS FILE NO.

24 FEB 22 11:00

RECEIVED

This matter comes before the Board of Commissioners as an appeal from the Hearings Officer's amended order in this case (a copy of which is attached hereto as Exhibit "A").

The applicants are the owners of Tax Lot 300 and Tax Lot 500 located in the 21000 block of Abiqua Rd NE (T7S, R1E, Section 13D), Silverton, OR.

HISTORY

Mr. & Mrs. Bodunov purchased these lots in 2021 with the intent that each lot would be a building site for their two sons. It was their understanding at that time that they were separate buildable lots. Only recently did they discover that there was an issue as to whether or not Marion County would consider them separate lots.

LAW

MCC 17.110.315 defines a lot as a unit of land created by deed or land sale contract prior to September 1, 1977. MCC 17.110.360 defines a lot of record as a lot or parcel described by metes and bounds which has been recorded in the office of the county recorder and which complied with all applicable laws at the time of its recording. MCC 17.110.427 defines a legal parcel as a unit of land created by deed or land sale contract prior to September 1, 1977. In this case, without question, the April 27, 1964 deed which was recorded in Volume 585, Page 269 of the Marion County Real Property Records separated Tax Lot 300 from Tax Lot 500 although other Tax Lots were attached. Subsequently, those other Tax Lots were sold off leaving only Tax Lot 300 and Tax Lot 500 which were legally, then, separate legal lots of record.

APPEAL

The staff decision, as upheld by the Marion County Hearings Officer recognizes the above history, but then creates a new policy for Marion County. The Marion County code

does not currently include a provision that requires the combination of two legal lots merely because a scribe used a single description at some point after the lots were separated. While the Board of Commissioners has the legal ability and authority to define when two legal lots of record would be combined, it has not done so. The staff, as affirmed by the Hearings Officer, decided arbitrarily to look to the deed closest in time to but prior to September 1, 1977 to determine legal lot of record status. There is no legal basis for that policy unless it is adopted by the Board of Commissioners.


Mr. & Mrs. Bodunov had the right to rely on the county code as written in making their real property decisions. If the county is to adopt a policy by which property owners could inadvertently destroy the separate nature of their legal lots of record, the county should affirmatively do so, but Mr. & Mrs. Bodunov should not lose their rights unless such a decision is affirmatively made by the Board.

CONCLUSION

Tax Lots 300 and 500 meet the test set out in Marion County's Code. They were separately described by metes and bounds prior to September 7, 1977. Mr. and Mrs. Bodunov request that the Board of Commissioners accept this appeal, hold a hearing and reverse the Hearing Officer's decision.

Respectfully submitted this 22nd day of February, 2024.

KELLEY ♦ KELLEY

By: 
DONALD M. KELLEY, OSB#741703
Of Attorneys for Mr. & Mrs. Bodunov
Email: dkelley@kelleyattorneys.com

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of:

Prohar and Evdokia Bodunov

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)
)

Case No. AR 23-033

ADMINISTRATIVE REVIEW

AMENDED

ORDER

I. Nature of the Application

This matter came before the Marion County Hearings Officer on the Application of Prohar and Evdokia Bodunov for an administrative review to determine the number of legal lots on a tract of approximately 26.65-acres in an TC (Timber Conservation) zone located in the 21000 block of Abiqua Rd NE (T7S; R1E; Section 13D, Tax lots 300 & 500).

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Code, Chapter 17, particularly MCC 17.110 and MCC 17.115.

III. Hearing

A public hearing was held on the application on January 4, 2024. At the hearing the Planning Division file was made a part of the record. The following persons appeared and provided testimony:

- | | | |
|----|------------------|----------------------------------|
| 1. | Nicole Inman | Marion County Planning Division |
| 2. | Donald E. Kelley | Attorney for Applicants |
| 3. | Austin Barnes | Marion County Planning Division. |

No objections were raised to notice, jurisdiction, conflict of interest, exhibits, evidence or testimony presented at the hearing. Additional submissions were included in the record and marked as Exhibit 1:

Exhibit 1: Index of Deeds and Copies of Deeds. The deeds submitted as Exhibit 1 are already in the record, but the copies of the deeds presented as Exhibit 1 are more legible than the copies of the deeds included in the Planning file.

IV. Executive Summary

Applicants request administrative review to determine the number of legal lots on a tract of approximately 26.65-acres in a Timber Conservation zone located in the 21000 block of Abiqua Rd. NE.

The Applicants state that the two parcels (Tax Lots 300 and 500) were considered separate lots of record in a 1964 Deed. The two parcels were described in metes and bounds and were recorded. On this basis, Applicants argues that Tax Lot 300 and 500 are separate lots of record.

Marion County Planning states that a 1975 Deed combined the two previous lots into a consolidated parcel. The 1975 deed referenced a recorded Contract of Sale for its legal description. The metes and bounds legal description in both a 1972 deed and a 1975 deed match the current legal description in the current vesting deed. Marion County's position is that there cannot be multiple lots of record, and only the one consolidated lot of record has been used and recorded since land use regulations.

Applicants respond that the fact that the two parcels have been recorded as a single lot of record in 1974 does not strip the parcels of their status as lots of record. Marion County responds that the Applicants' interpretation would result in the existence of multiple lots of record.

Because Tax Lot 300 and Tax Lot 500 have been described in metes and bounds as a single parcel and the single parcel has been recorded in contracts, assignments, and deeds, it is determined that Tax Lots 300 and 500 constitute a single legal lot of record.

V. Findings of Fact

The Hearings Officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject property is designated Forest in the Marion County Comprehensive Plan and is correspondingly zoned TC (Timber Conservation). The primary intent of both this designation and zone is to conserve forest lands by maintaining the forest land base and to protect the forest economy.
2. The subject property includes Tax Lots 300 and and Tax Lot 500 and is located approximately 1.25 miles south from the intersection of Abiqua Spring Ln NE and Abiqua Rd NE. Abiqua Rd NE runs through the parcels.
3. Both Tax Lot 300 and Tax Lot 500 are both bare land and have not been the subject of any land use actions.
4. Surrounding properties are also zoned TC with the majority being medium to large sized, undeveloped parcels. There are a few small parcels to the south/southeast and several homesites throughout the area.
5. Marion County Planning stated that although Tax Lots 300 and 500 may have been individual parcels in a 1964 deed, property owners took actions through contracts, assignments, and deeds to combine the parcels into one legal lot that has been used as the legal description for Tax Lots 300 and 500 as a single legal lot.

6. Donald Kelley, attorney for Prohar and Evdokia Bodenov, presented the Applicants' position. Mr. Kelley stated that the parcels were split and were two separate lots in 1964 (lots that also included additional real property). Mr. Kelley argues on behalf of the Applicants that a "lot of record" cannot lose its status as a legal lot by being combined in a deed or land sale contract absent a clear intention to vacate the status of the lots. Applicants' argue that their position is supported by state law which provides that a lawfully created lot or parcel remains a discrete lot or parcel unless the lot or parcel lines are vacated or the lot or parcel is further divided as provided by law. ORS 92.017(1).
7. The Planning Division posits that there cannot be multiple lots of record, and in this case, only one has been used since land use regulations.
8. The Planning Division requested comments from various governmental agencies. All contacted agencies either failed to comment or stated no concern with/objection to the proposal.

VI. Additional Finding of Fact and Conclusions of Law

1. Applicants have the burden of proving by a preponderance of the evidence that all applicable standards and criteria are met as explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390, 394-395(1987).

"Preponderance of the evidence" means the greater weight of evidence. It is such evidence that when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted).

Applicants must prove, by substantial evidence in the record, it is more likely than not that each criterion is met. If the evidence for any criterion is equal or less, Applicants have not met their burden and the application must be denied. If the evidence for every criterion there's a hair or breath in Applicants' favor the burden of proof is met and the application is approved.

2. Pursuant to MCC 17.115.010, the Planning Director is authorized to issue determinations or administrative reviews regarding conformance of existing or proposed uses on a particular lot or parcel within the requirements of this title, including determinations or administrative review relating to non-conforming uses as provided in Chapter 17.110 MCC, subject to the requirements of this chapter.
3. An administrative review is a written determination that requires an interpretation or the exercise of factual, policy, or legal judgment, and is considered a land use decision and is issued as a land use decision.

4. The Applicants seek a determination of how many legal lots exist within the bounds of tax lots 300 and 500. Per Marion County Code 17.115, a proposed use, structure, or the legality of a lot or parcel may be reviewed as an administrative review when it requires an interpretation or the exercise of factual, policy, or legal judgment. This decision is issued as a land use decision.
5. MCC 17.115.110 provides that when a determination about a proposed use, structure or the legality of a parcel cannot be made without interpretation or the exercise of factual, policy or legal judgment, the proposes use, structure, or the legality of a lot or parcel may be reviewed as an administrative review subject to submitted of an application as provided in MCC17.119.020 and 17.119.025.
6. MCC 17.115.110 (A) states:
"The decision shall be made on the basis of the comprehensive plan and applicable standards and criteria in this title. The director or designee may attach any conditions of approval deemed necessary to ensure conformance of the use, structure, lot or parcel or to the standards or criteria. Administrative review applications may be filed and shall be signed as required in MCC 17.119.020 and 17.119.025. Notwithstanding any other provisions of this title, the director or designee may forward any land use permit or application to the planning commission or hearings officer for a public hearing and initial decision."
7. In its Notice of Decision issued on November 17, 2023, the Director determined that Tax Lots 300 and 500 constitute a single legal lot.
8. MCC 17.115.110(C) allows an application to file a request for hearing to the planning division within 15 days of the date the decision was received.
9. On November 27, 2023, within 15 days of the date the decision was received, submitted an Appeal of the Planning Division decision. The Applicants' appeal is timely.
10. On request for a hearing, the hearings officer shall hold a hearing on the matter in accordance with MCC 17.111. The hearings officer may hold a hearing and issue a determination on this matter.

Lot, Lot of Record, and Parcel

11. MCC 17.110.315 defines a "Lot" as a unit of land created by a subdivision as defined in ORS 92.010 in compliance with all applicable zoning and subdivision ordinances; or created by deed or land sale contract prior to September 1, 1977, exclusive of units of land created solely to establish a separate tax account.

12. MCC 17.110.360 defines a “lot of record” as a lot which is part of a subdivision or a lot or parcel described by metes and bounds which has been recorded in the office of the county recorder and which complied with all applicable laws at the time of its recording.
13. MCC 17.114.040 defines a “nonconforming lot of record” as any lot created by deed, plat or subdivision prior to September 1, 1977, is considered legally created for the purposes of applying the land use code.
14. Marion County Code 17.110.427 defines a legal parcel as:

“Parcel” means a unit of land created by a partitioning as defined in ORS 92.010 in compliance with all applicable zoning and partitioning code provisions contained in Chapter 17.172 MCC, or created by deed or land sales contract prior to September 1, 1977, excluding units of land created solely to establish a separate tax account.
15. Based upon MCC 17.110.427, Marion County Planning looks to the deed closest in time, but prior to September 1, 1977. Planning reviews the legal description in the deed that is closest to but prior to September 1, 1977 to determine the original legal lot. Planning then reviews for any changes that occurred between the date of the deed and present day (by deed or land use action). Based upon this information, Marion County Planning ascertains the current legal lots.
16. Applicants state that MCC 17.110.360 defines a lot of record and that Tax Lot 300 and Tax Lot 500 satisfy that definition because Tax Lots 300 and 500 were described in metes and bounds, which were recorded in the office of the county recorder, and complied with the applicable laws at the time of recording. Applicants argues that the mere fact that a recorded contract later described the Tax Lot 300 and Tax Lot 500 with a single legal description does not alter their status as a “lot of record.” Applicants argue that state law allows a lawfully created lot to remain a discrete lot or parcel unless the lot or parcel lines are vacated or the lot or parcel is further divided as provided by law. ORS 92.017(1) provides that a lawfully created lot or parcel remains a discrete lot or parcel unless the lot or parcel lines are vacated or the lot or parcel is further divided as provided by law. Marion County Code does not include an analogous provision.
17. Applicants provided historical and recent deeds and contracts for review with the Application. Exhibit 1 also includes the deeds and contracts with more legible copies of the documents. The documents considered are:

April 27, 1964 Deed: Warranty Deed recorded at Volume 585, Page 269:

The legal description in the warranty deed included Parcel 1 and Parcel 2 with separate and individual metes and bounds. Parcel 1 included Tax Lot 200, 300, and a portion of Tax Lot 400. Parcel 2 included Tax Lots 500, 600, 700, and 800. The “save and except”

for Parcel 2 incorrectly describes a portion of Tax Lot 400 and should have been attached to Parcel 1.

The 1964 Warranty Deed does describe Tax Lots 300 and 500 as portions of separate legal lots.

Tax Lots 300 and 500 were considered separate legal lots in 1964.

November 3, 1967 Contract: Land Sale Contract recorded at Volume 638, Page 731:

The legal description for the property conveyed pursuant to the Land Sale Contract included single metes and bounds encompassing Tax Lots 200, 700, and 800.

June 13, 1972 Contract: Land Sale Contract recorded at Volume 728, Page 450:

The legal description for the property being conveyed included single metes and bounds encompassing Tax Lots 300, 500, 600, and a portion of Tax Lot 400, save and except a portion of Tax Lot 400.

August 15, 1972: Assignment of Contract references Volume 728, Page 450:

The assignment assigned the land sale contract for Tax Lots 300, 500, and 600.

October 2, 1973: Contract for the Sale of Property recorded at Volume 762, Page 113:

The legal description for the property was a single metes and bounds description for Tax Lot 600. Tax Lot 600 was conveyed by the contract for sale, and therefore, Tax Lot 300 and Tax Lot 500 are the remnant parcel. Tax Lot 600 was conveyed out of the larger parcel, separately described, and Tax Lots 300 and 500 were one parcel.

This contract sale was for tax lot 600. Therefore, Tax Lots 300 and 500 are the remnant parcel, as tax lot 600 was conveyed out of the larger parcel and described separately prior to Reel 10 Page 694 being recorded.

June 20, 1974: Land Sale Contract recorded at Volume 780, Page 741:

The legal description for the property conveyed pursuant to the Land Sale Contract included a single mete and bounds description that included Tax Lots 300, 500, and 600, and a portion of Tax Lot 400, save and except a portion of Tax Lot 400 and save and except Tax Lot 600.

The 1974 Land Sale Contract created a unit of land by land sale contract prior to September 1, 1977.

March 11, 1975: Assignment of Contract recorded at Reel 10, Page 694:

The assignment assigned the Land Sale Contract for Tax Lots 300 and 500. Reel 10 Page 694, recorded March 11, 1975, was the deed that Staff found closest, but prior to, September 1, 1977. It references a legal description used in a contract sale from Vol. 728 Page 450. This legal description was of one parcel that encompassed Tax Lots 300 and 500.

August 24, 2021: Warranty Deed recorded at Reel 4530, Page 473:

The Warranty Deed conveyed Tax Lots 300 and 500 with a legal description consisting of a single mete and bounds description that included Tax Lot 300 and Tax Lot 500, along with Tax Lot 600 and a portion of Tax Lot 400, and save and except Tax Lot 600 and the portion of Tax Lot 400.

This legal description is the same as the legal description provided in the Contract Sale recorded on June 20, 1974 at Volume 780, Page 741.

The last legal description in a recorded document prior to September 1, 1977 describes Tax Lot 300 and Tax Lot 500 as a single legal lot. The most recent recording also describes Tax Lot 300 and Tax Lot 500 as a single legal lot. Since land use regulation in Marion County, the two tax lots have been conveyed as one lot. Pursuant to Marion County Code 17.110.427, Tax Lots 300 and 500 are a single legal lot because it was defined as such by deed and land sales contract prior to September 1, 1977, and remains as a single lot through the last recorded deed in 2021.

18. Marion County Code does not include a provision that requires a lot or parcel line be affirmatively vacated to remain a discrete lot or parcel as ORS 92.017(1) requires.
19. In *Thomas v. Wasco County* (LUBA 2008-206), the Board considered a Wasco County Zoning Ordinance that consolidated certain nonconforming contiguous legal lots and parcels for development purposes. The Board referenced that in *Kishpaugh v. Clackamas County* (24 LUBA 164 (1992)), the Board held that a county land use regulation that for development purposes required combination of substandard lots under the same ownership was not inconsistent with ORS 92.017. In *Kishpaugh*, the Board concluded that nothing in either the text of ORS 92.017 or its legislative history suggests that all lawfully created lots and parcels must be recognized by local governments as being separately developable. ORS 92.017 is intended to preserve discrete lots and prevent local governments from refusing to recognize lawful divisions of land such that lots and parcels could not be sold to third parties. The Board also referenced *Campbell v. Multnomah County*, 25 LUBA 479 (1993) which held that ORS 92.017 does not preclude a local government from imposing zoning or other restrictions with directly or indirectly require that two or more lawfully created lots be combined for purposes of development.
20. In this case, a land sale contract and subsequent deeds treat the two tax lots as one legal parcel. The last legal description for the subject property in a recorded document prior to September 1, 1977 describes Tax Lot 300 and Tax Lot 500 as a single legal lot. The most recent recording also describes Tax Lot 300 and Tax Lot 500 as a single legal lot. Since land use regulation in Marion County, the two tax lots have been conveyed as one lot.
21. Pursuant to Marion County Code 17.110.427, Tax Lots 300 and 500 are a single legal lot because it was defined as such by deed and land sales contract prior to September 1, 1977, and remains as a single lot through the last recorded deed in 2021. No changes have been made to the parcel since Reel 10 Page 694. Nothing in ORS 92.017 prohibits the lots from being consolidated by Deed under the Marion County Code.

VII. Order

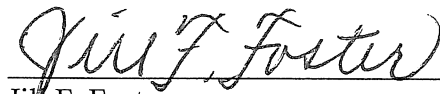
Because Tax Lot 300 and Tax Lot 500 have been described in metes and bounds as a single parcel and the single parcel has been recorded in contracts, assignments, and deeds, it is determined that Tax Lots 300 and 500 constitute a single legal lot of record.

It is hereby determined that Tax Lots 300 and 500 represent one parcel of land that was lawfully established in Marion County.

VIII. Appeal Rights

An appeal of this decision may be taken by anyone aggrieved or affected by this Order. An appeal must be filed with the Marion County Clerk (555 Court St. NE, Suite 2130, Salem, Oregon) by 5:00 p.m. on the 23rd day of February, 2024 (15 days after the date of the Order). The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be returned.

DATED at Salem, Oregon this 8th day of February, 2024.



Jill F. Foster

Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Prohar Bodunov
29865 S. Jackson Rd.
Canby, OR 97013

Surveyor's Office (via email)
KInman@co.marion.or.us

Don Kelley
110 N 2nd Street
Silverton, OR 97381

Fire District:
Silverton Fire District (via email)
billmiles@silvertonfire.com

Area Advisory Committee #7:
Dawn Olson
15056 Quall Rd
Silverton, OR 97381
James Sinn (via email)
ijsinn@gmail.com

Planning Division (via email)
breich@co.marion.or.us
abarnes@co.marion.or.us
ANajeraSanchez@co.marion.or.us

Roger Kaye
Friends of Marion County
P.O. Box 3274
Salem, OR 97302

Building Inspection (via email)
pwolterman@co.marion.or.us
Kaldrich@co.marion.or.us
ABammes@co.marion.or.us
CTate@co.marion.or.us

1000 Friends of Oregon
PO Box 40367
Portland, OR 97240

Building Inspection Septic
(via email: abammes@co.marion.or.us)
(via email: Kaldrich@co.marion.or.us)

Pudding River Watershed Council
(via email)
anna@puddingriverwatershed.org
cleanpuddingriver@gmail.com

Public Works LDEP Section (via email)
jrasmussen@co.marion.or.us
mcldep@co.marion.or.us
JShanahan@co.marion.or.us

County Agencies Notified:
Assessor's Office (via email)
assessor@co.marion.or.us

School District:
Silver Falls (via email)
Nielsen steve@silverfalls.K12.or.us

Tax Collector (via email)
Rweisner@co.marion.or.us
NMcVey@co.marion.or.us
ADhillon@co.marion.or.us

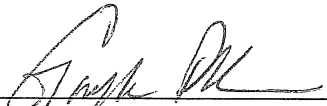
Code Enforcement (via email)
CGoffin@co.marion.or.us
JTaylor@co.marion.or.us
ccaballero@co.marion.or.us

State Agencies Notified:

DLCD (*via email*)

hilary.foote@state.or.us

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 8th day of February, 2024 and that the postage thereon was prepaid.



Administrative Assistant to the
Hearings Officer

MARION COUNTY
BILL BURGESS
MARION COUNTY CLERK

Receipt #: 17383 Receipt Date: 02/22/2024 10:54 AM
Station: 3 Cashier: DMI
Receipt Name: DON KELLEY

Comments:

Miscellaneous Fees		
Appeal Fee	YES	\$500.00

Receipt Total	\$500.00
CASH	\$500.00

Thank You!
BILL BURGESS, MARION COUNTY CLERK
Please retain this receipt for your records.
Documents are recorded as submitted. The Marion County Clerk's Office
assumes no liability for sufficiency, validity, or accuracy.

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of:

Prohar and Evdokia Bodunov

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Case No. AR 23-033

ADMINISTRATIVE REVIEW

AMENDED

ORDER

I. Nature of the Application

This matter came before the Marion County Hearings Officer on the Application of Prohar and Evdokia Bodunov for an administrative review to determine the number of legal lots on a tract of approximately 26.65-acres in an TC (Timber Conservation) zone located in the 21000 block of Abiqua Rd NE (T7S; R1E; Section 13D, Tax lots 300 & 500).

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Code, Chapter 17, particularly MCC 17.110 and MCC 17.115.

III. Hearing

A public hearing was held on the application on January 4, 2024. At the hearing the Planning Division file was made a part of the record. The following persons appeared and provided testimony:

- | | | |
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| 1. | Nicole Inman | Marion County Planning Division |
| 2. | Donald E. Kelley | Attorney for Applicants |
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IV. Executive Summary

Applicants request administrative review to determine the number of legal lots on a tract of approximately 26.65-acres in a Timber Conservation zone located in the 21000 block of Abiqua Rd. NE.

AR 23-033 - ORDER

Bodunov

Page 1

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The Applicants state that the two parcels (Tax Lots 300 and 500) were considered separate lots of record in a 1964 Deed. The two parcels were described in metes and bounds and were recorded. On this basis, Applicants argues that Tax Lot 300 and 500 are separate lots of record.

Marion County Planning states that a 1975 Deed combined the two previous lots into a consolidated parcel. The 1975 deed referenced a recorded Contract of Sale for its legal description. The metes and bounds legal description in both a 1972 deed and a 1975 deed match the current legal description in the current vesting deed. Marion County's position is that there cannot be multiple lots of record, and only the one consolidated lot of record has been used and recorded since land use regulations.

Applicants respond that the fact that the two parcels have been recorded as a single lot of record in 1974 does not strip the parcels of their status as lots of record. Marion County responds that the Applicants' interpretation would result in the existence of multiple lots of record.

Because Tax Lot 300 and Tax Lot 500 have been described in metes and bounds as a single parcel and the single parcel has been recorded in contracts, assignments, and deeds, it is determined that Tax Lots 300 and 500 constitute a single legal lot of record.

V. Findings of Fact

The Hearings Officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject property is designated Forest in the Marion County Comprehensive Plan and is correspondingly zoned TC (Timber Conservation). The primary intent of both this designation and zone is to conserve forest lands by maintaining the forest land base and to protect the forest economy.
2. The subject property includes Tax Lots 300 and and Tax Lot 500 and is located approximately 1.25 miles south from the intersection of Abiqua Spring Ln NE and Abiqua Rd NE. Abiqua Rd NE runs through the parcels.
3. Both Tax Lot 300 and Tax Lot 500 are both bare land and have not been the subject of any land use actions.
4. Surrounding properties are also zoned TC with the majority being medium to large sized, undeveloped parcels. There are a few small parcels to the south/southeast and several homesites throughout the area.
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1. Applicants have the burden of proving by a preponderance of the evidence that all applicable standards and criteria are met as explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390, 394-395(1987).

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Applicants must prove, by substantial evidence in the record, it is more likely than not that each criterion is met. If the evidence for any criterion is equal or less, Applicants have not met their burden and the application must be denied. If the evidence for every criterion there's a hair or breath in Applicants' favor the burden of proof is met and the application is approved.

2. Pursuant to MCC 17.115.010, the Planning Director is authorized to issue determinations or administrative reviews regarding conformance of existing or proposed uses on a particular lot or parcel within the requirements of this title, including determinations or administrative review relating to non-conforming uses as provided in Chapter 17.110 MCC, subject to the requirements of this chapter.
3. An administrative review is a written determination that requires an interpretation or the exercise of factual, policy, or legal judgment, and is considered a land use decision and is issued as a land use decision.

4. The Applicants seek a determination of how many legal lots exist within the bounds of tax lots 300 and 500. Per Marion County Code 17.115, a proposed use, structure, or the legality of a lot or parcel may be reviewed as an administrative review when it requires an interpretation or the exercise of factual, policy, or legal judgment. This decision is issued as a land use decision.
5. MCC 17.115.110 provides that when a determination about a proposed use, structure or the legality of a parcel cannot be made without interpretation or the exercise of factual, policy or legal judgment, the proposes use, structure, or the legality of a lot or parcel may be reviewed as an administrative review subject to submitted of an application as provided in MCC17.119.020 and 17.119.025.
6. MCC 17.115.110 (A) states:
"The decision shall be made on the basis of the comprehensive plan and applicable standards and criteria in this title. The director or designee may attach any conditions of approval deemed necessary to ensure conformance of the use, structure, lot or parcel or to the standards or criteria. Administrative review applications may be filed and shall be signed as required in MCC 17.119.020 and 17.119.025. Notwithstanding any other provisions of this title, the director or designee may forward any land use permit or application to the planning commission or hearings officer for a public hearing and initial decision."
7. In its Notice of Decision issued on November 17, 2023, the Director determined that Tax Lots 300 and 500 constitute a single legal lot.
8. MCC 17.115.110(C) allows an application to file a request for hearing to the planning division within 15 days of the date the decision was received.
9. On November 27, 2023, within 15 days of the date the decision was received, submitted an Appeal of the Planning Division decision. The Applicants' appeal is timely.
10. On request for a hearing, the hearings officer shall hold a hearing on the matter in accordance with MCC 17.111. The hearings officer may hold a hearing and issue a determination on this matter.

Lot, Lot of Record, and Parcel

11. MCC 17.110.315 defines a "Lot" as a unit of land created by a subdivision as defined in ORS 92.010 in compliance with all applicable zoning and subdivision ordinances; or created by deed or land sale contract prior to September 1, 1977, exclusive of units of land created solely to establish a separate tax account.

12. MCC 17.110.360 defines a “lot of record” as a lot which is part of a subdivision or a lot or parcel described by metes and bounds which has been recorded in the office of the county recorder and which complied with all applicable laws at the time of its recording.
13. MCC 17.114.040 defines a “nonconforming lot of record” as any lot created by deed, plat or subdivision prior to September 1, 1977, is considered legally created for the purposes of applying the land use code.
14. Marion County Code 17.110.427 defines a legal parcel as:

“Parcel” means a unit of land created by a partitioning as defined in ORS 92.010 in compliance with all applicable zoning and partitioning code provisions contained in Chapter 17.172 MCC, or created by deed or land sales contract prior to September 1, 1977, excluding units of land created solely to establish a separate tax account.

15. Based upon MCC 17.110.427, Marion County Planning looks to the deed closest in time, but prior to September 1, 1977. Planning reviews the legal description in the deed that is closest to but prior to September 1, 1977 to determine the original legal lot. Planning then reviews for any changes that occurred between the date of the deed and present day (by deed or land use action). Based upon this information, Marion County Planning ascertains the current legal lots.
16. Applicants state that MCC 17.110.360 defines a lot of record and that Tax Lot 300 and Tax Lot 500 satisfy that definition because Tax Lots 300 and 500 were described in metes and bounds, which were recorded in the office of the county recorder, and complied with the applicable laws at the time of recording. Applicants argues that the mere fact that a recorded contract later described the Tax Lot 300 and Tax Lot 500 with a single legal description does not alter their status as a “lot of record.” Applicants argue that state law allows a lawfully created lot to remain a discrete lot or parcel unless the lot or parcel lines are vacated or the lot or parcel is further divided as provided by law. ORS 92.017(1) provides that a lawfully created lot or parcel remains a discrete lot or parcel unless the lot or parcel lines are vacated or the lot or parcel is further divided as provided by law. Marion County Code does not include an analogous provision.
17. Applicants provided historical and recent deeds and contracts for review with the Application. Exhibit 1 also includes the deeds and contracts with more legible copies of the documents. The documents considered are:

April 27, 1964 Deed: Warranty Deed recorded at Volume 585, Page 269:

The legal description in the warranty deed included Parcel 1 and Parcel 2 with separate and individual metes and bounds. Parcel 1 included Tax Lot 200, 300, and a portion of Tax Lot 400. Parcel 2 included Tax Lots 500, 600, 700, and 800. The “save and except”

for Parcel 2 incorrectly describes a portion of Tax Lot 400 and should have been attached to Parcel 1.

The 1964 Warranty Deed does describe Tax Lots 300 and 500 as portions of separate legal lots.

Tax Lots 300 and 500 were considered separate legal lots in 1964.

November 3, 1967 Contract: Land Sale Contract recorded at Volume 638, Page 731:

The legal description for the property conveyed pursuant to the Land Sale Contract included single metes and bounds encompassing Tax Lots 200, 700, and 800.

June 13, 1972 Contract: Land Sale Contract recorded at Volume 728, Page 450:

The legal description for the property being conveyed included single metes and bounds encompassing Tax Lots 300, 500, 600, and a portion of Tax Lot 400, save and except a portion of Tax Lot 400.

August 15, 1972: Assignment of Contract references Volume 728, Page 450:

The assignment assigned the land sale contract for Tax Lots 300, 500, and 600.

October 2, 1973: Contract for the Sale of Property recorded at Volume 762, Page 113:

The legal description for the property was a single metes and bounds description for Tax Lot 600. Tax Lot 600 was conveyed by the contract for sale, and therefore, Tax Lot 300 and Tax Lot 500 are the remnant parcel. Tax Lot 600 was conveyed out of the larger parcel, separately described, and Tax Lots 300 and 500 were one parcel.

This contract sale was for tax lot 600. Therefore, Tax Lots 300 and 500 are the remnant parcel, as tax lot 600 was conveyed out of the larger parcel and described separately prior to Reel 10 Page 694 being recorded.

June 20, 1974: Land Sale Contract recorded at Volume 780, Page 741:

The legal description for the property conveyed pursuant to the Land Sale Contract included a single mete and bounds description that included Tax Lots 300, 500, and 600, and a portion of Tax Lot 400, save and except a portion of Tax Lot 400 and save and except Tax Lot 600.

The 1974 Land Sale Contract created a unit of land by land sale contract prior to September 1, 1977.

March 11, 1975: Assignment of Contract recorded at Reel 10, Page 694:

The assignment assigned the Land Sale Contract for Tax Lots 300 and 500. Reel 10 Page 694, recorded March 11, 1975, was the deed that Staff found closest, but prior to, September 1, 1977. It references a legal description used in a contract sale from Vol. 728 Page 450. This legal description was of one parcel that encompassed Tax Lots 300 and 500.

August 24, 2021: Warranty Deed recorded at Reel 4530, Page 473:

The Warranty Deed conveyed Tax Lots 300 and 500 with a legal description consisting of a single mete and bounds description that included Tax Lot 300 and Tax Lot 500, along with Tax Lot 600 and a portion of Tax Lot 400, and save and except Tax Lot 600 and the portion of Tax Lot 400.

This legal description is the same as the legal description provided in the Contract Sale recorded on June 20, 1974 at Volume 780, Page 741.

The last legal description in a recorded document prior to September 1, 1977 describes Tax Lot 300 and Tax Lot 500 as a single legal lot. The most recent recording also describes Tax Lot 300 and Tax Lot 500 as a single legal lot. Since land use regulation in Marion County, the two tax lots have been conveyed as one lot. Pursuant to Marion County Code 17.110.427, Tax Lots 300 and 500 are a single legal lot because it was defined as such by deed and land sales contract prior to September 1, 1977, and remains as a single lot through the last recorded deed in 2021.

18. Marion County Code does not include a provision that requires a lot or parcel line be affirmatively vacated to remain a discrete lot or parcel as ORS 92.017(1) requires.
19. In *Thomas v. Wasco County* (LUBA 2008-206), the Board considered a Wasco County Zoning Ordinance that consolidated certain nonconforming contiguous legal lots and parcels for development purposes. The Board referenced that in *Kishpaugh v. Clackamas County* (24 LUBA 164 (1992)), the Board held that a county land use regulation that for development purposes required combination of substandard lots under the same ownership was not inconsistent with ORS 92.017. In *Kishpaugh*, the Board concluded that nothing in either the text of ORS 92.017 or its legislative history suggests that all lawfully created lots and parcels must be recognized by local governments as being separately developable. ORS 92.017 is intended to preserve discrete lots and prevent local governments from refusing to recognize lawful divisions of land such that lots and parcels could not be sold to third parties. The Board also referenced *Campbell v. Multnomah County*, 25 LUBA 479 (1993) which held that ORS 92.017 does not preclude a local government from imposing zoning or other restrictions with directly or indirectly require that two or more lawfully created lots be combined for purposes of development.
20. In this case, a land sale contract and subsequent deeds treat the two tax lots as one legal parcel. The last legal description for the subject property in a recorded document prior to September 1, 1977 describes Tax Lot 300 and Tax Lot 500 as a single legal lot. The most recent recording also describes Tax Lot 300 and Tax Lot 500 as a single legal lot. Since land use regulation in Marion County, the two tax lots have been conveyed as one lot.
21. Pursuant to Marion County Code 17.110.427, Tax Lots 300 and 500 are a single legal lot because it was defined as such by deed and land sales contract prior to September 1, 1977, and remains as a single lot through the last recorded deed in 2021. No changes have been made to the parcel since Reel 10 Page 694. Nothing in ORS 92.017 prohibits the lots from being consolidated by Deed under the Marion County Code.

VII. Order

Because Tax Lot 300 and Tax Lot 500 have been described in metes and bounds as a single parcel and the single parcel has been recorded in contracts, assignments, and deeds, it is determined that Tax Lots 300 and 500 constitute a single legal lot of record.

It is hereby determined that Tax Lots 300 and 500 represent one parcel of land that was lawfully established in Marion County.

VIII. Appeal Rights

An appeal of this decision may be taken by anyone aggrieved or affected by this Order. An appeal must be filed with the Marion County Clerk (555 Court St. NE, Suite 2130, Salem, Oregon) by 5:00 p.m. on the 23rd day of February, 2024 (15 days after the date of the Order). The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be returned.

DATED at Salem, Oregon this 8th day of February, 2024.



Jill F. Foster

Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Prohar Bodunov
29865 S. Jackson Rd.
Canby, OR 97013

Surveyor's Office (via email)
KInman@co.marion.or.us

Don Kelley
110 N 2nd Street
Silverton, OR 97381

Fire District:
Silverton Fire District (via email)
billmiles@silvertonfire.com

Area Advisory Committee #7:
Dawn Olson
15056 Quall Rd
Silverton, OR 97381
James Sinn (via email)
ijsinn@gmail.com

Planning Division (via email)
breich@co.marion.or.us
abarnes@co.marion.or.us
ANajeraSanchez@co.marion.or.us

Roger Kaye
Friends of Marion County
P.O. Box 3274
Salem, OR 97302

Building Inspection (via email)
pwolterman@co.marion.or.us
Kaldrich@co.marion.or.us
ABammes@co.marion.or.us
CTate@co.marion.or.us

1000 Friends of Oregon
PO Box 40367
Portland, OR 97240

Building Inspection Septic
(via email: abammes@co.marion.or.us)
(via email: Kaldrich@co.marion.or.us)

Pudding River Watershed Council
(via email)
anna@puddingriverwatershed.org
cleanpuddingriver@gmail.com

Public Works LDEP Section (via email)
jrasmussen@co.marion.or.us
mcldep@co.marion.or.us
JShanahan@co.marion.or.us

County Agencies Notified:
Assessor's Office (via email)
assessor@co.marion.or.us

School District:
Silver Falls (via email)
Nielsen steve@silverfalls.k12.or.us

Tax Collector (via email)
Rweisner@co.marion.or.us
NMcVey@co.marion.or.us
ADhillon@co.marion.or.us

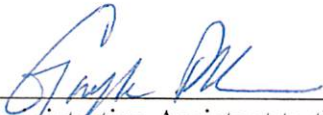
Code Enforcement (via email)
CGoffin@co.marion.or.us
JTaylor@co.marion.or.us
ccaballero@co.marion.or.us

State Agencies Notified:

DLCD (via email)

hilary.foote@state.or.us

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 8th day of February, 2024 and that the postage thereon was prepaid.



Administrative Assistant to the
Hearings Officer

NOTICE PUBLIC HEARING AFFECTING THIS AREA

Administrative Review 23-033

PURPOSE OF HEARING: for an administrative review to determine the number of legal lots on a tract of approximately 26.65-acres in an TC (Timber Conservation) zone located in the 21000 block of Abiqua Rd NE (T7S; R1E; Section 13D, Tax lots 300 & 500).

APPLICANTS: Prohar and Evdokia Bodunov

DATE AND TIME OF HEARING: January 4, 2024, 2:00 p.m.

LOCATION OF HEARING: Senator Hearing Room, 1st floor, Courthouse Square Building, 555 Court St. NE, Salem

HOW TO PARTICIPATE: Any interested person (or representative) may comment at the hearing or submit written comments. Written comments may be submitted at the hearing or, if submitted prior to the hearing, must be received at the Planning Division office by 5:00 p.m. the day before this public hearing. The Planning Director's decision, application, documents and applicable criteria are available for review at no cost and copies are available. The staff report will be available at least seven days prior to hearing. The decision can also be viewed on the Planning Division website at: <http://www.co.marion.or.us/PW/Planning/Pages/Public%20Hearings.aspx>. Before the close of the initial evidentiary hearing any party may request an opportunity to present additional evidence, argument or testimony. The hearings officer shall grant the request by continuing the hearing or leaving the written record open for at least seven days.

Testimony presented at land use hearings conducted by the Hearings Officer must be under oath. Witnesses giving oral testimony will be sworn in at the time testimony is given. Corporations, including governmental bodies that are the applicant must appear through an attorney (ORS 9.320). Licensed Oregon attorneys may make legal argument without being sworn, as long as facts on which the argument is based are supported by sworn oral testimony or written affidavit. After the close of the hearing the Hearings Officer may approve or deny the application, remand to the Planning Division, or approve a modified proposal. Failure to raise an issue, in person or by letter, or failure to provide sufficient specificity to afford the Hearings Officer an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals (LUBA) based on that issue. Notice to mortgagee, lienholder, vendor, or seller: ORS CHAPTER 215 requires that if you receive this notice, it must promptly be forwarded to the purchaser.

LAND USE DECISION CRITERIA: The criteria upon which the decision on this application will be based include:

- MCC 17.115 Determinations and Administrative Reviews
- MCC 17.110 General Provisions

For information regarding this application contact Nicole Inman; ninman@co.marion.or.us; (503) 566-4165; Marion County Planning Division; (503) 588-5038; 5155 Silverton Rd NE, Salem Oregon 97305

NOTE: The scheduling of a hearing and the mailing of this notice should not be construed in any way as a determination that the application has been deemed complete under the provisions of ORS 215.428.

In order to accommodate persons with physical impairments, please notify the Planning Division of any accommodations you may need as far in advance of the hearing as possible.

NOTICE PUBLIC HEARING AFFECTING THIS AREA

Administrative Review 23-033

PURPOSE OF HEARING: for an administrative review to determine the number of legal lots on a tract of approximately 26.65-acres in an TC (Timber Conservation) zone located in the 21000 block of Abiqua Rd NE (T7S; R1E; Section 13D, Tax lots 300 & 500).

APPLICANTS: Prohar and Evdokia Bodunov

DATE AND TIME OF HEARING: January 4, 2024, 2:00 p.m.

LOCATION OF HEARING: Senator Hearing Room, 1st floor, Courthouse Square Building, 555 Court St. NE, Salem

HOW TO PARTICIPATE: Any interested person (or representative) may comment at the hearing or submit written comments. Written comments may be submitted at the hearing or, if submitted prior to the hearing, must be received at the Planning Division office by 5:00 p.m. the day before this public hearing. The Planning Director's decision, application, documents and applicable criteria are available for review at no cost and copies are available. The staff report will be available at least seven days prior to hearing. The decision can also be viewed on the Planning Division website at: <http://www.co.marion.or.us/PW/Planning/Pages/Public%20Hearings.aspx>. Before the close of the initial evidentiary hearing any party may request an opportunity to present additional evidence, argument or testimony. The hearings officer shall grant the request by continuing the hearing or leaving the written record open for at least seven days.

Testimony presented at land use hearings conducted by the Hearings Officer must be under oath. Witnesses giving oral testimony will be sworn in at the time testimony is given. Corporations, including governmental bodies that are the applicant must appear through an attorney (ORS 9.320). Licensed Oregon attorneys may make legal argument without being sworn, as long as facts on which the argument is based are supported by sworn oral testimony or written affidavit. After the close of the hearing the Hearings Officer may approve or deny the application, remand to the Planning Division, or approve a modified proposal. Failure to raise an issue, in person or by letter, or failure to provide sufficient specificity to afford the Hearings Officer an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals (LUBA) based on that issue. Notice to mortgagee, lienholder, vendor, or seller: ORS CHAPTER 215 requires that if you receive this notice, it must promptly be forwarded to the purchaser.

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**BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON**

In the Matter of the)	Case No. AR23-033
Application of:)	
Prohar and Evdokia Bodunov)	

ORDER NO. _____

This matter comes before the Marion County Board of Commissioners ("Board") on the application of Prohar and Evdokia Bodunov for an administrative review to determine the number of legal lots on a track of approximately 26.65 acres in a TC (Timber Conservation) zone located in the 21000 block of Abiqua Rd NE, (T7S; R1E; Section 13D; Tax lots 300 and 500).

The Marion County Hearings Officer held a duly noticed public hearing on this application on January 4, 2024, and issued a decision determining that the property constitutes one legal parcel on February 8, 2024. The Hearings Officer's decision was appealed to the Board on February 22, 2024. On March 20, 2024, the Board considered the appeal, application, and findings.

IT IS HEREBY ORDERED that the appeal is **DENIED**, and the Board affirms the Hearings Officer's decision on this matter, which is attached as Exhibit A.

DATED this _____ day of _____, 2024, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Commissioner

Commissioner

JUDICIAL NOTICE

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.