

Friends of Linn County

Protecting and preserving our farms, forests, and communities

Linn County Planning Commission
c/o Deborah Pinkerton
Linn County Department of Planning and Building
PO Box 100
Albany, OR 97321

November 24, 2008

RE: PD08-0203 Lynch property line adjustment

Dear Members of the Commission:

Friends of Linn County (FOLC) is a charitable organization whose mission is to protect, preserve, and enhance the livability and sustainability of Linn County's farms, forests and cities. FOLC is appearing in these proceedings on behalf of its membership in Linn County. Mr. Just is also appearing on his own behalf.

I. Introduction

The applicants request approval of a property line adjustment that would increase the size of an RR-5 parcel from 0.99 to 1.99 acres and decrease the size of a F/F parcel from 56.86 to 55.86 acres. The resulting 1.99-acre parcel would be split-zoned F/F and RR-5.

The properties are located west of Ty Valley Road about 2½ miles south of Lebanon and are described as 12S-2W-34 Tax Lot 105 and 12S-2W-34D Tax Lot 3700.

II. Criteria applicable to the request

HB 3629 (2008) subsection (2) requires that a unit of land that is reduced in size by a property line adjustment approved by a city or county must comply with applicable zoning ordinances (i.e., minimum lot or parcel size requirements) after the adjustment except when:

- “a. One or both of the abutting properties are smaller than the minimum lot or parcel size for the applicable zone before the property line adjustment and, after the adjustment, one is as large as or larger than the minimum lot or parcel size for the applicable zone; or
- “b. Both units of land were initially smaller than the minimum size for the zone.”

III. Analysis

ORS 215.780(1) requires and LC 934.510 establishes an 80-acre minimum lot or parcel size in the F/F zone. Absent one of the exceptions enumerated in ORS 215.780, a county may not approve a division of resource land if that land division would create parcels that do not meet the minimum parcel size requirement. *Dorvinen v. Crook County*, 153 Or App 391, 957 P2d

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180, *rev den* 327 Or 620 (1998); *Alliance for Responsible Land Use v. Deschutes County*, 37 Or LUBA 215 (1999), *aff'd* 166 Or App 166, 995 P2d 1227, *rev den* 330 Or 362 (2000).

Similarly, prior to the passage of HB 3629 during the 2008 legislative session, a county could not allow a property line adjustment where the property line adjustment results in a lot or parcel that is smaller than the minimum size established by the zone or in further reducing in size a lot or parcel which is already smaller than the minimum size established by the zone. *Phillips v. Polk County*, 213 Or App 498, 162 P3d 338 (2007); *Fenn v. Douglas Co.*, ___ Or LUBA ___ (LUBA No. 2007-175, 03/03/2008), slip op 3.

The minimum lot or parcel standards established by ORS 215.780(1) control where a local ordinance allows property line adjustments that result in parcels smaller than the statutory minimum. *Phillips* at slip op 4.

The legislature in 2008 passed HB 3629, which authorizes counties to approve property line adjustments which reduce the size of a parcel below the minimum size in the applicable zone or which further reduce in size an already substandard parcel, under specified circumstances. An adjustment then may be allowed if both properties were initially smaller than the minimum size of the applicable zone or, if one met the minimum size requirement and the other did not, at least one resulting property meets the minimum standard of the applicable zone.

In the situation present here, only one unit of land is within the F/F zone before the property line adjustment. At 56.86 acres, that unit of land is below the minimum size of the zone.

After the property line adjustment, the F/F zone would be applicable to *two* units of land. The 56.86-acre property would be reduced in size to 55.86 acres. A new 1.99-acre unit of land would be created, split-zoned F/F and RR. That unit of land is also smaller than the minimum size of the F/F zone, whether or not the RR component is considered.

The circumstances identified by HB 3629 under which a property line adjustment resulting in units of land smaller than the minimum of 80 acres established by the F/F zone are present. Therefore the resulting units of land must be at least 80 acres in size.

IV. Conclusion

The proposed property line adjustment would result in further reducing in size a substandard F/F parcel and in creating an additional substandard unit of F/F land. This result is not consistent with ORS 215.780 or HB 3629. Therefore the property line adjustment may not be approved.

The Planning Commission should initiate a review of LC Chapter 925 in general and 925.345 in particular to bring it into compliance with current state law.

FOLC and Mr. Just request written notice and copies of any findings and decision in this matter.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jim Just". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Jim Just
President