



Josephine County, Oregon

Community Development – Planning Division

700 NW Dimmick, Suite C / Grants Pass, OR 97526

(541) 474-5421 / Fax (541) 474-5422

E-mail: planning@co.josephine.or.us

VALIDATION OF UNLAWFULLY CREATED PARCEL

Authorized Lot Determination with Noticing

PROPERTY & APPLICATION INFORMATION

ASSESSOR'S LEGAL DESCRIPTION:

TWN _____ RNG _____ SEC _____ QQ _____ TAX LOT _____

TWN _____ RNG _____ SEC _____ QQ _____ TAX LOT _____

PROPERTY ADDRESS: _____

EXISTING ZONING: _____ PARCEL SIZE: _____

OWNERSHIP & APPLICANT INFORMATION

OWNER'S NAME: _____ TEL: _____

MAILING ADDRESS: _____

APPLICANT'S NAME: _____ TEL: _____

MAILING ADDRESS: _____

REPRESENTATIVE: _____ TEL: _____

MAILING ADDRESS: _____

EMAIL ADDRESS: _____

BASIS FOR VALIDATION

- OPTION 1 – Undeveloped:** Parcel is undeveloped, created by sale prior to January 1, 2007, and the sale did not comply with the laws in effect at time of sale but could have complied.
- OPTION 2 – Developed with Permits:** Parcel is developed, created by sale prior to January 1, 2007, the sale did not comply with laws in effect at time of sale, and the property has since developed with permits.
- OPTION 3 – Developed without Permits:** Parcel is developed, created by sale prior to January 1, 2007, the sale did not comply with laws in effect at the time of sale, and the property has since developed without permits.

APPLICANT'S STATEMENT OF UNDERSTANDING

I _____, have filed an application for an **VALIDATION OF UNLAWFULLY CREATED PARCEL** with the Community Development – Planning Division to be reviewed and processed according to state and county requirements. I acknowledge the following disclosures:

1. I understand that any representations, conclusions or opinions expressed by staff in the pre-application review of this request do not constitute final authority or approval, and that I am not entitled to rely upon any such expressions in the place of final approval.
2. I understand I may ask questions and receive input from planning staff, but acknowledge that I am ultimately responsible for all information and documentation submitted with this application. I further understand planning staff cannot legally bind the county to any fact or circumstance that conflicts with state or local laws, and in the event a conflict occurs, all such statements or agreements are void.
3. I understand I have the burden of demonstrating my application meets all of the applicable standards and criteria. The standards and criteria for approving or denying my request have been furnished to me as a part of this application and I acknowledge receipt.
4. I understand planning staff is entitled to ask for additional information or documentation any time after the submission of this application if it is determined such information is needed for the review of my application.
5. In the event my application involves a farm or forest use or a Comprehensive Plan Zone Change, I understand it may be reviewed by the Oregon Department of Land Conservation and Development (DLCD). If this happens, and DLCD comments on the application, I understand DLCD has the authority to appeal the county's decision to the Oregon Land Use Board of Appeals if it chooses to do so.
6. I understand it is the function of the planning office to impartially review my application and to address all issues affecting it regardless of whether the issues promote or hinder the approval of my application. In the event a public hearing is required to consider my application, I agree it is my sole responsibility to establish the case in favor of the application.
7. I understand I am entitled to have a lawyer or a land use consultant help me with my application and to appear with me (or for me) at any appointment, conference or hearing relating to the application.
8. I understand the processing of my application may require a site visit, which may include officials from other agencies, and photographs are commonly taken. Advance notice of the visit will be provided when the site is also a personal residence.

DATE: _____, 20_____.

OWNER/APPLICANT *

OWNER/APPLICANT *

** If the applicant is someone other than the owner, a power of attorney must be on file from the owners authorizing the application*

Provisions of ORS 92.176 allow Josephine County to validate a unit of land that was not lawfully created under three options. The options are listed at the bottom of the application cover sheet. You must check the option that applies to your situation. Please follow the directions listed below for the option that applies to your request. When you complete this application and attach the required documentation, submit it with the application fee.

OPTION #1: UNLAWFUL PARCEL UNDEVELOPED – ORS 92.176(1):

This option applies only if you own an *undeveloped* parcel of land. In order to qualify your parcel for validation you must provide documentation that establishes all of the following three standards for approval:

1. **Your parcel was created by sale before January 1, 2007.**

- Attach copy of the deed or land sales contract used to buy your parcel. If a land sales contract was used you must submit a complete copy that includes the legal description.

2. **Your parcel was not lawfully created based upon the laws in effect at the time of sale.**

- Explain why you think your parcel did not comply with the rules in place at the time you bought your parcel. If it helps, copies of the county's land use regulations going back to the first ordinance in 1958 are posted in chronological order on the Planning Office's website, at <http://www.co.josephine.or.us/Code.asp>. From this page click on "Historical Documents" and this will take you to a list of the county ordinances in Acrobat Reader format (PDF). Choose the date that most recently precedes the date of sale. The county did not have land use regulations before October 23, 1958.

3. **Your parcel could have complied with the land use regulations applicable to the creation of new parcels on the date of sale.**

- This rule requires you to show your parcel could have met the clear and objective standards for creating new parcels at the time of sale. Generally, this means the parcel met the minimum standards for parcel size and design and the requirements for access when the parcel was sold, but did not go through the platting process for partitions or obtain a zoning clearance permit. However, if the regulations in effect at the time of sale required a public hearing or additional discretionary reviews, such as variances, zone changes, or conditional or special use permits, the sale cannot meet the "could have complied" rule. Here are two examples of how the "could have complied" rule works:

Example #1: The parcel was sold in 1982 when the property was residentially zoned for 5 acre parcels and the regulations required the lot to front a county road for 25' and have 300' of width. The regulations also required an approved partition plat to be recorded in the county's deed records before the sale. Instead, the parcel was sold by a deed without review or approval and without a recorded plat. The parcel, however, is 6 acres in size, has a width of 350', and fronts on a county road for 100'. **Conclusion:** The parcel could have complied. The parcel met or exceeded clear and objective development standards and the approval and recording of a plat was subject to non-discretionary standards.

Example #2: The parcel was first sold in 1978 when the property was zoned for parcels with a minimum size of 5 acres, 300' of lot width, and 25' feet of frontage on a county road. In this case, the parcel was sold as 4.75 acres, had 300' of lot width, and fronted a county road for 25'. The land use regulations allowed the creation of smaller parcels only with an approved variance. However, a variance could be obtained only after a public hearing before the Planning Commission. The hearing had to be announced by publication in a newspaper and by mailing notice to surrounding property owners. In order to be approved, the application had to satisfy special discretionary criteria. **Conclusion:** The parcel could not have complied. Because the smaller parcel size could only have been approved in a public hearing, after notice to the public, and subject to discretionary criteria, none of which occurred, it is impossible to conclude the parcel could have complied.

OPTION #2: UNLAWFUL PARCEL DEVELOPED WITH PERMITS – ORS 92.176(2):

1. **Your parcel was created by sale before January 1, 2007.**
 - Attach copy of the deed or land sales contract used to create and describe your parcel as it now exists. If a written contract was used to sell the property you must submit a complete copy that includes the legal description.
2. **Your parcel was not lawfully created based upon the laws in effect at the time of sale.**
 - Explain why you think your parcel did not comply with the rules in place at the time you bought your parcel. If it helps, copies of the county's land use regulations going back to the first ordinance in 1958 are posted in chronological order on the Planning Office's website, at <http://www.co.josephine.or.us/Code.asp>. From this page click on "Historical Documents" and this will take you to a list of the county ordinances in Acrobat Reader format (PDF). Choose the date that most recently precedes the date of sale. The county did not have land use regulations before October 23, 1958.
3. **Your parcel has been developed with a dwelling or building pursuant to a valid planning permit.**
 - Attach a copy of the planning permit (usually a development permit) that authorized the dwelling or building. This part of the rule is meant to cover situations where the parcel was not lawfully created but you nonetheless obtained a development permit to construct a dwelling or building from the Josephine County Planning Office, and then developed the structures. In this situation your parcel may be validated on this basis, even though the sale of your parcel could not have complied with the rules in effect at the time of sale.
4. **If your parcel was approved for a dwelling, you must show the dwelling presently exists and meets the following requirements for replacement (per ORS 215.755 (1)(a) to (e)).**
 - Has intact exterior walls and roof structure; and
 - Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system; and
 - Has interior wiring for interior lighting; and

- Has a heating system; and
- In case of replacement, the original dwelling must be removed, demolished or converted to an allowable nonresidential use within 3 months of completion of the replacement dwelling.
- Attach photographs that clearly document each of the first four conditions listed above. Remember, in order to have the parcel validated, you must be able to prove the dwelling presently exists with all of the required features, that is, standing walls and roof, a kitchen and bathroom, a sewage disposal system, interior wiring and lights and a functioning heating system.

OPTION #3: UNLAWFUL PARCEL LAWFULLY DEVELOPED WITHOUT PERMITS – ORS 92.176(3):

1. Your parcel was created by sale before January 1, 2007.

- Attach copy of the deed or land sales contract used to create and describe your parcel as it now exists. If a land sales contract was used you must submit a complete copy that includes the legal description.

2. Your parcel was not lawfully created based upon the laws in effect at the time of sale.

- Explain why you think your parcel did not comply with the rules in place at the time you bought your parcel. If it helps, copies of the county's land use regulations going back to the first ordinance in 1958 are posted in chronological order on the Planning Office's website, at <http://www.co.josephine.or.us/Code.asp>. From this page click on "Historical Documents" and this will take you to a list of the county ordinances in Acrobat Reader format (PDF). Choose the date that most recently precedes the date of sale. The county did not have land use regulations before October 23, 1958.

3. A dwelling and/or other buildings were lawfully established prior to January 1, 2007.

- You must prove the dwelling and/or other buildings were *lawfully* constructed on the property prior to January 1, 2007. In order to establish the dwelling and/or buildings were lawfully constructed, you must prove the development occurred at a time prior to land use permit requirements for new construction. Planning permit requirements for construction began on June 28, 1973. In order to use this option, you must show the structures existed before this date. If you have permits issued after June 28, 1973 use Option #2.

4. SPECIAL NOTE: Planning and building permits may be issued upon platting of validated parcels developed without permits, but those permits cannot authorize anything more than continued use of the dwelling or other buildings. Permits issued under this rule, now or in the future, cannot allow uses of the dwelling and/or other buildings to be changed or intensified.

- Attach a detailed description of the uses currently conducted from the dwelling and/or other buildings.

ALL OPTIONS: PARTITION PLAT REQUIRED – ORS 92.176(5):

- A parcel becomes lawfully established when the county validates the parcel with a written decision (called findings of approval) **AND the owner of the parcel causes a final plat for a partition to be recorded within 90 days after the date of the county's decision.**
- According to Oregon Law, final plats for partitions must be prepared by a licensed surveyor, reviewed and approved by the county's Planning Director, Surveyor and Assessor, and must be recorded in the Clerk's Office, all within 90 days. There are fees associated with the review and approval of final partition plats. Owners will be wise to have a surveyor lined up in advance to do the mapping work as soon as planning approval is obtained. Ninety days is not a long period of time to get all of this done, so you are advised to act promptly.

ALL OPTIONS: MINIMUM PARCEL SIZE REQUIREMENTS IN FARM AND FOREST ZONES DO NOT APPLY – ORS 92.176(4):

- When deciding whether unlawfully created parcels located within farm and forest zones qualify for validation, the county cannot require owners to show their parcels met minimum parcel size requirements in effect at the time of original sale. Farm and forest zones are the only exception to minimum parcel size rules.

ALL OPTIONS: DEVELOPMENT OR IMPROVEMENT AFTER VALIDATION - ORS 92,176(7):

- The subsequent development or improvement of validated parcels must comply with all permit requirements pursuant to applicable land use regulations and state and local building codes in effect when a complete land use application for the development or improvement is submitted.