

BEFORE THE BOARD OF COMMISSIONERS FOR JOSEPHINE COUNTY  
STATE OF OREGON

IN THE MATTER OF PROVIDING }  
DIRECTION TO THE PLANNING DIREC- }  
TOR REGARDING THE IMPLEMENTA- }  
TION OF ORS 92.176 FOR VALIDATING }  
UNITS OF LAND THAT ARE NOT }  
LAWFULLY ESTABLISHED }  

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**ORDER NO. 2009-019**

WHEREAS, it has come to the attention of the Board of Commissioners that the 2007 Oregon Legislature adopted new legislation for validating units of land that have not been lawfully established, subject to certain standards and procedures, and the law is now codified in the Oregon Revised Statutes as 92.176 (a copy of ORS 92.176 is attached to this Order as Exhibit A); and

WHEREAS, Section 10.080 of the Rural Land Development Code specifies that mandatory amendments to the Oregon Revised Statutes shall govern land use applications and procedures within Josephine County upon the date they become effective; and

WHEREAS, the county's Rural Land Development Code, at Article 11.030, already provides a definition with standards for the authorization of lots or parcels based upon the laws in effect at the time the lots or parcels were created; and

WHEREAS, the county has already adopted a list of land use applications with applicable fees by Board Order 2007-032 pursuant to the requirements of the Josephine County Home Rule Charter; and

WHEREAS, the adopted list of applications and fees already includes ones for the processing of requests to determine whether units of land are authorized for development, and also for notifying affected agencies and property owners; and

WHEREAS, the language contained within ORS 92.176 requires some clarification before the county implements this law; and

WHEREAS, after review of the foregoing matters with County Legal Counsel and the Planning Director in three public meetings on March 5 and 19, and April 16, 2009, the Board finds that it is both prudent and expedient to resolve certain matters regarding the implementation of ORS 92.176;

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. Requests to validate units of land as lawful parcels shall be considered a request for an Authorized Lot Determination pursuant to the county's list of land use

applications. In addition, unlike other Authorized Lot Determinations, ORS 92.176 specifies that applications to validate must be processed as quasi-judicial land use decisions. As a result, public notice of validation applications must be given to adjacent landowners and affected public and private agencies both before and after decisions are made. Therefore, requests to validate units of land as lawful parcels shall also be considered a request for Re-Noticing pursuant to the county's list of land use applications.

2. The Planning Director shall be the review body for validation applications subject to the rules and procedures as set forth in Article 22.040 of the Rural Land Development Code for quasi-judicial land use decisions. Quasi-judicial land use decisions by operation of law include the right of the public to participate in the review of such applications and to appeal decisions if they believe they are not correct. Appeals, if any, shall be made to the Board of Commissioners pursuant to the requirements contained in Oregon law and the Rural Land Development Code for appeals of land use decisions made without a public hearing.

3. The validation of unlawful parcels shall require an application for an Authorized Lot Determination and an application for a Re-Noticing Request. The permit fees for the two applications as now approved or hereafter approved pursuant to the Josephine County Home Rule Charter and Oregon Revised Statutes shall apply.

4. Units of land shall be validated pursuant to ORS 92.176 when all three of the following conditions are shown to exist:

- a. The unit of land was created by sale before January 1, 2007; and
- b. The unit of land was not lawfully created based upon the laws in effect at the time of sale; and
- c. The unit of land could have complied with the applicable criteria for a lawfully established unit of land in effect at the time it was sold.

5. In order to clarify the meaning of the phrase "could have complied" in the third condition for approval just described above, the Board makes the following special findings:

- a. In order to determine whether a unit of land could have complied with the applicable criteria for a lawfully established unit of land in effect at the time of sale, the Planning Director shall consider and apply clear and objective standards for approval based upon minimum parcel size, parcel design standards and minimum access rules only.

- b. If land use regulations in effect at the time of the sale that created the unit of land would have required a public hearing or would have required discretionary actions, including but not limited to variances, zone changes, conditional uses or special use permits, and such actions did not occur before sale, the sale by definition could not have complied with applicable criteria, and cannot therefore be considered a valid unit of land.

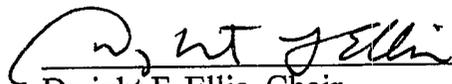
6. Other options for validating units of land under ORS 92.176 based upon subsequent construction of structures on a particular unit of land pursuant to Sections (2), (3) and (4) of the statute shall be implemented as described in the statute.

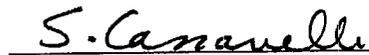
7. As specified in Section (5) of ORS 92.176, all validated parcels must submit an application for final partition plat approval of the validated parcel with the planning office. Per Board Order 2007-32, the fee for final plat approval is \$600. The final plat must be approved and recorded with the County Clerk within 90 days from the date the validation decision becomes final.

8. As specified in Section (7) of ORS 92.176 the subsequent development or improvement of fully validated parcels must comply with the applicable laws which are in effect on the date a complete application for the development or improvement is submitted, as that date is determined pursuant to the provisions of ORS 215.427(3)(a) regarding final action on land use permits.

DONE and DATED this 29 day of April, 2009.

JOSEPHINE COUNTY  
BOARD OF COMMISSIONERS

  
Dwight F. Ellis, Chair

  
Sandi Cassanelli, Vice Chair

  
Dave Toler, Commissioner

## EXHIBIT A

**92.176 Validation of unit of land not lawfully established.** (1) A county or city may approve an application to validate a unit of land that was created by a sale that did not comply with the applicable criteria for creation of a unit of land if the unit of land:

(a) Is not a lawfully established unit of land; and

(b) Could have complied with the applicable criteria for the creation of a lawfully established unit of land in effect when the unit of land was sold.

(2) Notwithstanding subsection (1)(b) of this section, a county or city may approve an application to validate a unit of land under this section if the county or city approved a permit, as defined in ORS 215.402 or 227.160, respectively, for the construction or placement of a dwelling or other building on the unit of land after the sale. If the permit was approved for a dwelling, the county or city must determine that the dwelling qualifies for replacement under the criteria set forth in ORS 215.755 (1)(a) to (e).

(3) A county or city may approve an application for a permit, as defined in ORS 215.402 or 227.160, respectively, or a permit under the applicable state or local building code for the continued use of a dwelling or other building on a unit of land that was not lawfully established if:

(a) The dwelling or other building was lawfully established prior to January 1, 2007; and

(b) The permit does not change or intensify the use of the dwelling or other building.

(4) An application to validate a unit of land under this section is an application for a permit, as defined in ORS 215.402 or 227.160. An application to a county under this section is not subject to the minimum lot or parcel sizes established by ORS 215.780.

(5) A unit of land becomes a lawfully established parcel when the county or city validates the unit of land under this section if the owner of the unit of land causes a partition plat to be recorded within 90 days after the date the county or city validates the unit of land.

(6) A county or city may not approve an application to validate a unit of land under this section if the unit of land was unlawfully created on or after January 1, 2007.

(7) Development or improvement of a parcel created under subsection (5) of this section must comply with the applicable laws in effect when a complete application for the development or improvement is submitted as described in ORS 215.427 (3)(a) or 227.178 (3)(a). [2007 c.866 §2]

**Note:** 92.176 was added to and made a part of 92.010 to 92.190 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.