

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

3
4 MIKE LECKIE,
5 *Petitioner,*

6
7 vs.

8
9 LANE COUNTY,
10 *Respondent,*

11
12 and

13
14 LANDWATCH LANE COUNTY,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2024-024

18
19 ORDER

20 Petitioner appealed the county’s denial of a legal lot verification for his
21 property. We affirmed the county’s decision. *Leckie v. Lane County*, LUBA No
22 2024-024 (Oct 10, 2024). The Court of Appeals affirmed our decision. *Leckie v.*
23 *Lane County*, 338 Or App 742, 566 P3d 702 (2025).

24 **MOTION FOR ATTORNEY FEES**

25 Intervenor-respondent (intervenor), the prevailing party, moves for an
26 award of attorney fees in the amount of \$15,288 pursuant to ORS 197.830(15)(b),
27 which provides that the Board “[s]hall award reasonable attorney fees and
28 expenses to the prevailing party against any other party who the [B]oard finds
29 presented a position or filed any motion without probable cause to believe the
30 position or motion was well-founded in law or on factually supported

1 information.” In deciding whether to award attorney fees against a non-prevailing
2 party, we must determine that “every argument in the entire presentation [that a
3 non-prevailing party] makes to LUBA is lacking in probable cause (*i.e.*, merit).”
4 *Fechtig v. City of Albany*, 150 Or App 10, 24, 946 P2d 280 (1997). Under ORS
5 197.830(15)(b), a position is presented “without probable cause” where “no
6 reasonable lawyer would conclude that any of the legal points asserted on appeal
7 possessed legal merit.” *Contreras v. City of Philomath*, 32 Or LUBA 465, 469
8 (1996). In applying the probable cause analysis, LUBA “will consider whether
9 any of the issues raised [by a party] were open to doubt, or subject to rational,
10 reasonable, or honest discussion.” *Id.* “The party seeking an award of attorney
11 fees under the probable cause standard must clear a relatively high hurdle, and
12 that hurdle is not met by simply showing that LUBA rejected all of a party’s
13 arguments on the merits.” *Wolfgram v. Douglas County*, 54 Or LUBA 775, 776
14 (2007) (citing *Brown v. City of Ontario*, 33 Or LUBA 803, 804 (1997)).

15 Petitioner challenged a hearings official decision that affirmed a planning
16 director decision denying petitioner’s legal lot verification application. Petitioner
17 presented three assignments of error. We denied all three assignments of error
18 and affirmed the county’s decision. Intervenor argues that an award of attorney
19 fees is appropriate because all three of petitioner’s assignments of error were
20 presented without probable cause to believe they were well-founded in law or on
21 factually supported information. Petitioner responds that all three assignments of

1 error were reasonable and presented with probable cause while addressing issues
2 that were open to doubt, debate, and honest discussion.

3 In the first assignment of error, petitioner challenged the legal lot
4 verification denial based on the plain language of the Lane County Code (LC)
5 that a legal lot verification “will be approved” for any “lawfully established unit
6 of land” and that a “lot or parcel created by filing a final plat for subdivision” is
7 a lawfully established unit of land. LC 13.140(3); LC 13.030(3)(n)(i). As the
8 subject property was undisputedly lawfully created by filing a plat for subdivision
9 in 1912, petitioner argued that the property was therefore a lawfully established
10 unit of land. The county, LUBA, and the Court of Appeals all found that although
11 the 1912 subdivision legally created units of land, subsequent partitions of the
12 property in 1977 and 1981 eliminated the property lines from the original 1912
13 subdivision and created new units of land.¹

14 Intervenor argues that petitioner’s first assignment of error lacked probable
15 cause because petitioner made no attempt to explain how the partitions did not
16 affect the property’s creation in 1912. According to intervenor, petitioner merely
17 repeated the argument that the property was legally created in 1912. Motion for
18 Attorney Fees 11. Petitioner responds that he did not ignore the subsequent
19 partitions but instead argued that the code does not require a “lawfully established

¹ In 1989, the then owner divided the property by deed, without going through the required partition process, resulting in the current configuration of the property.

1 unit of land” to be in the same configuration to be verified and that the hearings
2 official erred by inserting that requirement into the code. Response to Motion for
3 Attorney Fees 2 (citing Petition for Review 13).

4 The hearings official, LUBA, and the Court of Appeals relied on
5 *Weyerhaeuser Real Estate Develop. v. Polk County*, 246 Or App 548, 267 P3d
6 855 (2011) (*Weyerhaeuser*), for the principle that a subsequent partition had the
7 effect of vacating preexisting lot lines. Petitioner attempted to distinguish
8 *Weyerhaeuser* on the basis that *Weyerhaeuser* involved a property line
9 adjustment application rather than a legal lot verification. Petitioner also cited a
10 number of cases involving property line adjustments that he argued established
11 that legally created lots do not lose their legal status due to subsequent
12 reconfigurations. The hearings official, LUBA, and the Court of Appeals
13 disagreed with petitioner and held that *Weyerhaeuser* was on point and the
14 distinction between property line adjustments and legal lot verifications did not
15 affect the result of a subsequent partition vacating preexisting property lines.

16 While all the reviewing bodies disagreed with petitioner’s argument that
17 does not mean that the argument was not subject to rational, reasonable, or honest
18 discussion. Petitioner had probable cause to argue that the distinction between
19 property line adjustments and legal lot verifications could distinguish
20 *Weyerhaeuser*. Legal lot verifications, particularly in Lane County, have been
21 subject to a multitude of LUBA and Court of Appeals cases. The cases often turn
22 on complicated issues of applying preexisting law many years after the fact and

1 result in differences of opinion between the county, LUBA, and the Court of
2 Appeals. *See Jenkinson v. Lane County*, LUBA No 2024-091 (Apr 14, 2025)
3 (recounting various Lane County legal lot verification cases). In other words,
4 Lane County legal lot verifications are inherently complicated. While the current
5 case is perhaps less complicated than some of the other legal lot verification
6 cases, we cannot say petitioner’s arguments did not reach the low bar of probable
7 cause.² Petitioner’s argument was open to reasonable debate and discussion to a
8 sufficient extent to avoid an attorney fee award.

9 We conclude that petitioner had probable cause to believe that the position
10 presented in his first assignment of error was well-founded in law. ORS
11 197.830(15)(b). Accordingly, intervenor’s motion for attorney fees is denied.

12 COSTS

13 Intervenor’s motion for attorney fees includes a request for an award of
14 costs in the amount of \$100. Intervenor’s cost bill includes the filing fee for the
15 motion to intervene in the amount of \$100. OAR 661-010-0075(1)(b)(D) (Apr 1,
16 2024) provides: “If an intervenor under OAR 661-010-0050 * * * is the
17 prevailing party, the intervenor * * * may be awarded the cost of the fee to

² While not a *per se* reason to deny a motion for attorney fees, the fact that the Court of Appeals issued a precedential opinion rather than a nonprecedential memorandum opinion or an affirmed without an opinion lends additional credence to the finding that petitioner’s arguments were presented with probable cause.

1 intervene * * *.” Intervenor, the prevailing party in this appeal, is awarded its
2 filing fee in the amount of \$100, to be paid by petitioner.

3 Dated this 15th day of August 2025.

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8 Fred Wilson
9 Board Member