

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision of the board of county
4 commissioners granting tentative subdivision plan approval,
5 with conditions.

6 **MOTION TO INTERVENE**

7 Larry Campbell, Pam Campbell, Mike Filicetti and Diane
8 Filicetti move to intervene in this proceeding on the side
9 of respondent. There is no opposition to the motion, and it
10 is allowed.

11 **FACTS**

12 The subject undeveloped property is 15.3 acres in size
13 and is owned by petitioner. The subject property is located
14 approximately 1/2 mile north of the City of Hermiston. The
15 property is adjoined by two existing county rural collector
16 roads -- Sunshine Lane to the west and W. Punkin Center Road
17 to the south. Both are two-lane gravel roads with surface
18 widths of 24 to 28 feet.

19 The subject property is designated Rural Residential on
20 the Umatilla County Comprehensive Plan map and is zoned
21 Rural Residential, 2-acre minimum (RR-2). The properties
22 adjoining the subject property to the west, north and east
23 are also zoned RR-2 and are used for rural residences.
24 Parcel sizes range from one to five acres. The property
25 adjoining the subject property to the southeast is zoned
26 Future Urban, 10-acre minimum. The property adjoining the

1 subject property to the southwest is a 40-acre parcel owned
2 by the State Highway Division and zoned Heavy Industrial.
3 It is anticipated this property will be used as a gravel
4 quarry site.

5 On June 1, 1994, petitioner filed an application to
6 subdivide his property into seven lots, ranging in size from
7 2.0 to 2.5 acres. Record 150. Two of the proposed lots
8 would have direct access onto W. Punkin Center Road. Four
9 of the proposed lots would have direct access onto Sunshine
10 Lane. The remaining, corner lot would have direct access
11 onto both roads. Petitioner's subdivision tentative plan
12 does not propose the creation of any interior roads.

13 On October 12, 1994, after public hearings, the
14 planning commission approved petitioner's application, with
15 conditions. Intervenors appealed the planning commission
16 decision to the board of commissioners. On December 21,
17 1994, after an additional hearing, the board of
18 commissioners adopted the challenged decision approving
19 petitioner's subdivision application. However, the board of
20 commissioners added the following condition:

21 "The submitted subdivision [final] plat will have
22 only one point of ingress and egress before [the
23 plat] is recorded and [the subdivision]
24 developed."¹ Record 14.

¹The parties understand this condition to mean the final plat must be reconfigured to include an interior street, onto which the seven lots will have access, rather than the seven lots having direct access onto Sunshine Lane or W. Punkin Center Road. We share that understanding.

1 This appeal, in which petitioner seeks to challenge the
2 above quoted condition, followed.

3 **SECOND ASSIGNMENT OF ERROR**

4 Petitioner contends the county erred by considering a
5 new subdivision plan submitted by intervenors with their
6 local appeal. Petitioner further contends accepting this
7 new subdivision plan violates Umatilla County Development
8 Ordinance (UCDO) 10.030 and 10.035, which establish
9 procedures for reviewing a subdivision application and
10 requirements for the content of a subdivision tentative
11 plan. Petitioner argues this new subdivision plan was the
12 basis for the board of commissioners' decision to adopt the
13 challenged condition.

14 Intervenors contend an alternative subdivision plan was
15 drawn by neighbors of the proposed subdivision, and was
16 submitted to the county, only to demonstrate that it is
17 possible to redesign the subdivision to have a single access
18 point (via a cul-de-sac extending north through the middle
19 of the subject property from W. Punkin Center Road) and
20 still have seven two-acre lots. Record 37, 55, 91.
21 Intervenors argue this alternative plan does not constitute
22 a new, separate subdivision application.

23 We agree with intervenors. The alternative plan
24 submitted by intervenors and other neighbors is not a new
25 subdivision application, it merely supports their argument
26 that the proposed subdivision can be redesigned to have a

1 single access point and still create seven lots complying
2 with the requirements of the RR-2 zone. The challenged
3 decision does not approve intervenors' subdivision plan; it
4 approves petitioner's application with a condition that
5 prior to final plat approval, the subdivision plan be
6 reconfigured so that there is only one access point from the
7 subdivision onto the adjoining county roads.

8 The second assignment of error is denied.

9 **FIRST ASSIGNMENT OF ERROR**

10 Petitioner challenges the evidentiary support for the
11 board of commissioners' decision to impose the challenged
12 condition. Petitioner argues the evidence in the record
13 demonstrates his proposed subdivision tentative plan
14 "conforms and fits into the existing development scheme in
15 the area," as required by UCDO 10.035.6.e, and that
16 providing direct access from each of the seven lots onto the
17 adjoining county roads would be safe and meet UCDO
18 requirements for sight distance.

19 Intervenors cite evidence in the record that two
20 subdivisions adjoining the subject property to the east are
21 platted with an interior cul-de-sac extending north from
22 W. Punkin Center Road, and that parcels adjoining the
23 subject property to the north are served by an internal
24 access drive. Intervenors contend this evidence
25 demonstrates that petitioner's subdivision tentative plan
26 does not fit into "the existing development scheme in the

1 area." Intervenors also cite evidence in the record of
2 traffic safety problems concerning the existing gravel
3 county roads.

4 We are authorized to reverse or remand a challenged
5 decision if it is not supported by substantial evidence in
6 the whole record. ORS 197.835(7)(a)(C). When the
7 evidentiary support for imposition of a condition of
8 approval is challenged, we must determine whether the
9 evidence in the record would lead a reasonable person to
10 conclude that there is a need for the condition to further a
11 relevant planning purpose. Wastewood Recyclers v. Clackamas
12 County, 22 Or LUBA 258, 263-64 (1991); Sellwood Harbor Condo
13 Assoc. v. City of Portland, 16 Or LUBA 505, 522 (1988).

14 We have reviewed the relevant evidence in the record
15 cited by the parties. Record 17-21, 36-39, 42, 54-55, 84,
16 86, 95, 95, 131-34. Based on that evidence, we agree with
17 intervenors that a reasonable person could conclude there is
18 a need for the challenged condition to ensure that the
19 proposed subdivision "conforms and fits into the existing
20 development scheme in the area," as required by
21 UCDO 10.035.6.e, or to provide enhanced traffic safety.
22 Where LUBA concludes a reasonable person could reach the
23 decision made by the local government, in view of all the
24 evidence in the record, LUBA will defer to the local
25 government's choice between conflicting evidence. Bottum v.
26 Union County, 26 Or LUBA 407, 412 (1994).

1 The first assignment of error is denied.

2 The county's decision is affirmed.