



1 Opinion by Hanna.

2 **NATURE OF THE DECISION**

3 Petitioners appeal the city's denial of their minor  
4 partition request.

5 **FACTS**

6 Petitioner Calhoun owns and resides on a one-half acre  
7 parcel. After a septic tank failure the county required  
8 connection to sewer services. The city agreed to allow  
9 connection if the petitioner entered into an annexation  
10 agreement. After annexation was completed the city provided  
11 water and sewer services.

12 After the annexation, petitioners applied for a  
13 partition of the parcel to create two parcels. The city  
14 denied that request, and subsequently rezoned the land to  
15 permit smaller parcels. Petitioner again applied for a  
16 partition to create two parcels. The planning director  
17 approved the application with several conditions. The  
18 conditions included dedication of a ten-foot right-of-way  
19 and street improvements. Petitioner did not appeal that  
20 decision.

21 Several months later, in Schultz v. City of Grants  
22 Pass, 131 Or App 221, 884 P2d 569 (1994), the Court of  
23 Appeals decided that certain exactions imposed by the city  
24 as conditions to a partition approval based on potential  
25 development were unconstitutional exactions. Because the  
26 time for appealing the prior decision had passed, relying

1 on Schultz, petitioners submitted another application for a  
2 partition to create two parcels. They made clear that they  
3 would contest any conditions that required exactions. This  
4 time, instead of approving the partition application with  
5 conditions, the planning director denied the application.  
6 Petitioners appealed to the planning commission, which  
7 denied petitioners' appeal. Petitioners then appealed to  
8 the city council, which also denied petitioners' appeal.  
9 This appeal followed.

#### 10 **DISCUSSION**

11 Petitioners make four assignments of error: (1) that  
12 the city's denial of the partition is not supported by  
13 substantial evidence because the denial is based on  
14 speculative rather than actual development impacts; (2) that  
15 the city improperly construed applicable law when it denied  
16 the partition because its code requires infrastructure  
17 improvements based on potential rather than actual impacts  
18 raised by the proposed partition; (3) that the city made an  
19 unconstitutional decision when, based on the annexation  
20 agreement, it required petitioners to pay for improvements;  
21 and (4) that the city violated petitioners' substantive due  
22 process rights under the 14th amendment to the United States  
23 Constitution by approving an application with conditions and  
24 then denying a subsequent identical application.

25 Petitioners have not established any basis for remand  
26 or reversal of the county's decision. To the extent

1 petitioners argue state and federal constitutional issues,  
2 those arguments are without merit. Petitioners provide  
3 scant analysis to support their argument that the  
4 application of the code to deny the partition amounts to the  
5 imposition of an unconstitutional condition. Petitioners'  
6 argument that the approval of the application with  
7 conditions by a planning director, and the later denial of  
8 an apparently identical application by the city council is a  
9 violation of the 14th amendment to the United States  
10 Constitution is spurious.

11 Pursuant to ORS 197.835(16), the county's decision is  
12 affirmed.