

1 Opinion by Sherton.

2 NATURE OF THE DECISION

3 Petitioner appeals an order of the Yamhill County Board of
4 Commissioners denying his request for waivers from certain
5 requirements of the Yamhill County Land Division Ordinance
6 (LDO) in conjunction with the county's approval of a land
7 partition.

8 FACTS

9 On June 24, 1988, petitioner filed an application for a
10 major land partition with the county planning department.¹

11 Petitioner sought to create four parcels from a 20 acre parcel
12 zoned Very Low Density Residential, 5 Acre Minimum (VLDR-5).
13 The subject property contains two dwellings. One dwelling,
14 which has an approved septic system, would be located on
15 Parcel 2. The other dwelling, which does not have a sewage
16 disposal system, would be located on Parcel 1. Access to
17 Parcels 3 and 4 would be provided by an easement from a county
18 road which crosses the southeast corner of the property.

19 On July 15, 1988, the planning director issued a letter
20 stating that "preliminary land partition approval" is granted
21 with "conditions." Two conditions included in the letter were
22 that prior to final partition approval (1) the applicant must
23 obtain "site suitability approvals for subsurface septic
24 systems" on Parcels 1, 3 and 4; and (2) a survey of the four
25 parcels must be made by a registered land surveyor pursuant to
26 LDO 7.030. Record 20. The letter also advised the applicant

1 that prior to obtaining final partition approval "a fee of
2 \$40.00 shall be paid into the Yamhill County Park Trust Fund
3 for each new parcel created, to be used for park acquisition,
4 development and maintenance." Record 21.

5 Petitioner filed an appeal requesting waiver of these three
6 requirements. The county Land Development Review Committee
7 (LDRC) considered petitioner's appeal, and submitted its
8 recommendations to the planning director. On September 15,
9 1988, the planning director issued a decision in which he
10 approved (1) a waiver of the subsurface sewage disposal system
11 site approval requirement for Parcels 2 and 4, and (2) a waiver
12 of the park fee requirement for Parcels 1 and 2; but denied
13 (1) a waiver of the subsurface sewage disposal system site
14 approval requirement for Parcels 1 and 3, (2) a waiver of the
15 park fee requirement for Parcels 3 and 4, and (3) a waiver of
16 the survey requirement. Record 10-11.

17 Petitioner appealed the denials of the requested waivers to
18 the board of commissioners. The board of commissioners
19 affirmed the planning director's decision on October 26, 1988.
20 This appeal followed.

21 DECISION

22 Although the petition for review contains a section
23 entitled "Assignments of Error and Arguments," that section
24 contains only comments and responses by petitioner to specific
25 statements made at the board of commissioners' hearing on
26 petitioner's appeal. In its brief, the county points out it

1 cannot readily ascertain petitioner's assignments of error from
2 this section, but responds instead to three arguments included
3 by petitioner in the "Summary of Arguments" section of the
4 petition for review.

5 The petition for review does not contain separate
6 assignments of error, as required by OAR 661-10-030(d).
7 However, as petitioner appears pro se, we do not believe his
8 failure to comply with this rule warrants striking the petition
9 for review or dismissing the appeal. See Hilliard v. Lane
10 County, 51 Or App 587, 595, 626 P2d 905 (1981). We will,
11 therefore, consider arguments expressed in any section of the
12 petition for review, to the extent we can determine what those
13 arguments are and to the extent they are stated clearly enough
14 to afford the county an opportunity to respond. Faulkender v.
15 Hood River County, ___ Or LUBA ___ (LUBA No. 88-081, January 9,
16 1989), slip op 3-4; Bjerk v. Deschutes County, ___ Or LUBA ___
17 (LUBA No. 88-067, November 22, 1988), slip op 8-9; Schoonover
18 v. Klamath County, ___ Or LUBA ___ (LUBA No. 88-024, August 3,
19 1988), slip op 11, n4.

20 A. Unconstitutional Decision

21 Petitioner argues that the county's decision is
22 unconstitutional

23 " * * * by not being in accordance with the
24 requirements of ORS chapter 215 which requires that a
25 proposed development pattern shall be deemed to meet
26 the requirements of ORS 215.010, 215.030, 215.050,
215.060 and 215.110 to 215.213, 215.223 and 215.233
concerning comprehensive plans. * * * " Petition for
Review 1.

1 The county points out that no specific provision of the
2 United States or Oregon Constitution is cited by petitioner.
3 The county argues that a legislative act is presumed to be
4 constitutional. The county further argues that petitioner has
5 not sustained his burden of establishing that the LDO is
6 unconstitutional, on its face or in its application to
7 petitioner's appeal.

8 Petitioner does not explain what provision or provisions of
9 the U.S. or Oregon Constitutions are violated by the county's
10 decision. Petitioner offers no legal argument explaining why
11 the county's decision is not in accord with the cited sections
12 of ORS chapter 215 or why the decision's alleged inconsistency
13 with these provisions results in a violation of the U.S. or
14 Oregon Constitution.

15 LUBA has consistently held that it will not consider claims
16 of constitutional violations where the parties raising such
17 claims do not identify the constitutional provisions allegedly
18 violated or supply legal argument in support of their claims.
19 Faulkender v. Hood River County, supra, slip op 7; Chemeketa
20 Industries Corp. v. City of Salem, 159, 165-166 (1985); Mobile
21 Crushing Company v. Lane County, 11 Or LUBA 173, 182 (1984).

22 This subassignment of error is denied.

23 B. County Exceeded Its Jurisdiction

24 Petitioner asserts that in enforcing the survey and park
25 fee requirements of the LDO the county exceeded its
26 jurisdiction under ORS 197.175(2)(d) and 215.050(2).²

1 Petitioner argues "there are no goals or policies in the
2 Yamhill County acknowledged comprehensive plan that the survey
3 provisions of the [LDO] would relate to or be designed to
4 implement." Petition for Review 1-2. Petitioner also argues
5 that the LDO park fee requirement is not designed to implement
6 park and recreation policies in the Yamhill County
7 Comprehensive Plan (plan).

8 Petitioner argues that there are no plan provisions which
9 demand that the county require (1) partition maps to be
10 prepared by a professional surveyor, or (2) the payment of park
11 fees for parcels created by partitions. We understand
12 petitioner to argue that because ORS 197.175(2)(d) requires the
13 county to make its decision on his requested partition in
14 compliance with its acknowledged comprehensive plan, and
15 ORS 215.050(2) requires the LDO to be designed to implement the
16 county comprehensive plan, enforcement of an LDO provision
17 which is not mandated by the comprehensive plan exceeds the
18 county's jurisdiction.

19 Petitioner does not argue that the county's decision
20 violates ORS 197.175(2)(d) because it conflicts with the
21 county's acknowledged plan. Rather, petitioner's argument is
22 based on the premise that under ORS 215.050(2), a county may
23 only adopt and enforce land use regulation provisions if those
24 provisions are required to implement specific provisions or
25 requirements in the county's plan.

26 Petitioner misinterprets ORS 215.050(2). While

1 ORS 215.050(2) does require land use regulations to implement
2 the adopted county plan, it does not prohibit the adoption or
3 enforcement of land use regulation provisions which carry out
4 other authority granted to the county by law. For instance,
5 ORS 92.044(1)(a) authorizes a county to adopt, by ordinance or
6 regulation, standards and procedures for the approval of
7 subdivisions and partitions.

8 We believe the LDO survey and park fee provisions in
9 question are within the general grant of authority to the
10 county in ORS 92.044(1)(a). These LDO provisions need not be
11 designed to implement, or be necessitated by, a particular
12 provision in the comprehensive plan, as long as they are not
13 inconsistent with the comprehensive plan. Petitioner's
14 arguments in this subassignment of error provide no basis for
15 reversal or remand of a county decision applying the LDO
16 provisions in question.

17 This subassignment of error is denied.

18 C. Decision Not Supported by Substantial Evidence

19 We understand petitioner to argue that the county's
20 decision is not supported by substantial evidence in the whole
21 record that the proposed partition, with the waivers requested
22 by petitioner, would violate applicable LDO provisions
23 concerning survey and subsurface sewage disposal system site
24 approval requirements. Petitioner argues the evidence
25 indicates that "all four parcels can be developed for home
26 sites notwithstanding survey requirements, and that no public

1 interest in the easement road would be adversely effected [sic]
2 by not having been surveyed." Petition for Review 3-4.
3 Petitioner also specifically challenges a county finding that
4 Parcel 3 has steep slopes which substantially reduce its
5 feasibility for a subsurface sewage disposal system.

6 The county argues that the "conditions" which petitioner
7 requested be waived are simply requirements that applicable LDO
8 provisions be complied with. Therefore, the county argues
9 there is no legal requirement that its imposition of these
10 "conditions" be supported by substantial evidence.

11 The LDO states with regard to a survey requirement:

12 "The following provisions shall apply to all land
13 divisions and may be required by the [planning]
14 Director for submission with the final plat or map in
accordance with the provision[s] of this Ordinance and
ORS 92.

15 " * * * * *

16 "The surveying requirements and standards, or evidence
17 of a survey, described in this Section shall apply to
* * * [a]ll subdivisions and major partitions.

18 " * * * * * " LDO Chapter 7; 7.030.1.A.

19 The LDO provides as follows with regard to a subsurface
20 sewage disposal system site approval requirement:

21 "On any parcel to be created by subdivision or
22 partition for residential purposes, which is not
23 served by a public sewer system, the owner shall
24 provide the [planning] Director with an approved
25 septic site evaluation * * * from the County
26 Sanitarian or the State of Oregon Department of
Environmental Quality for each lot to be created for
residential purposes. An approved site evaluation
* * * for each lot intended for residential purposes
shall be submitted to the Director before preliminary
[land division] approval may be granted." LDO 6.100.2.

1 Petitioner's argument is for the most part based on the
2 incorrect premise that in order to support its denial of the
3 requested waivers, the county has the burden of proving that
4 the proposed partition, with the waivers requested by
5 petitioner, does not meet applicable LDO requirements. To the
6 contrary, it is petitioner, as the applicant for land
7 development approval, who has the burden of establishing that
8 the requested waivers comply with applicable law. See Van Sant
9 v. Yamhill County, 4 Or LUBA 359, 363-364 (1982). In fact,
10 petitioner has not sustained his burden. As the Court of
11 Appeals has explained:

12 " * * * a denial is supported by substantial evidence
13 * * * unless the reviewing court can say that the
14 proponent of change sustained his burden of proof as a
 matter of law. Jurgenson v. Union County Court, 42
 Or App 505, 600 P2d 1241 (1979).

15 We agree with the county that the "conditions" which
16 petitioner requests be waived are actually LDO mandatory
17 approval requirements for partitions.³ Petitioner does not
18 explain why these approval criteria do not apply to the
19 proposed partition, or under what authority the county is
20 allowed or required to waive such mandatory approval
21 criteria.⁴

22 Finally, with regard to the finding concerning the slopes
23 of Parcel 3 challenged by petitioner, we believe the finding is
24 mere surplusage. LDO 6.100.2 makes submittal of a subsurface
25 sewage disposal system site evaluation mandatory for partition
26 approval, so long as the parcel created is intended for

1 residential purposes. Petitioner does not claim that Parcel 3
2 is not intended for residential purposes.

3 This subassignment of error is denied.

4 CONCLUSION

5 Petitioner's arguments provide us with no basis for
6 reversal or remand of the county's decision. The county's
7 decision is affirmed.

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1 FOOTNOTES

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4 The boxes designating "minor partitioning" or "major
5 partitioning" were left blank on the submitted application.
6 Record 24. In the record, the county simply refers to the
7 requested action as a "land partition." However, we note that
8 the LDO defines the relevant terms as follows:

9 "41. Partition, Major - A partition which includes the
10 creation of a road or street.

11 "42. Partition, Minor - A partition which does not
12 include the creation of a road or street, but may
13 include the widening of an existing road or
14 street.

15 " * * * * *

16 "49. Road or Street - A public or private way that is
17 created to provide ingress or egress for persons
18 to one or more lots, parcels, areas or tracts of
19 land." LDO 3.010.

20 As explained in the text, infra, the requested partition
21 involves the creation of an easement to provide access to
22 Parcels 3 and 4. It is not entirely clear that the proposed
23 easement constitutes a "road or street," as defined in
24 LDO 3.010.49. However, the county argues that the approved
25 land division is a major partition, and petitioner does not
26 disagree with the county's position. We, therefore, assume the
27 approved land division constitutes a major partition.

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29 2

30 ORS 197.175(2)(d) provides:

31 " * * * each city and county in this state shall:

32 " * * * * *

33 "(d) If its comprehensive plan and land use
34 regulations have been acknowledged by the [Land
35 Conservation and Development] commission, make
36 land use decisions in compliance with the
37 acknowledged plan and land use regulations."

38 ORS 215.050(2) provides:

39 //

1 "Zoning, subdivision or other ordinances or
2 regulations and any revisions or amendments thereof
3 shall be designed to implement the adopted county
comprehensive plan."

4 3

5 The other "condition" challenged by petitioner is the
6 requirement that a park fee be paid for Parcels 3 and 4.
LDO 9.020 provides as follows:

7 "The Director * * * shall require a fee, to be
8 determined by order of the Board, for each parcel
9 created by land division to be paid into the Yamhill
County Park Trust Fund upon submission of the final
map or plat to the Planning Department."

10 We note that this "condition," too, is simply a requirement
11 that the above-quoted mandatory LDO approval requirement be
followed.

12 4

13 We note that LDO Chapter 14 provides procedures and
14 standards for obtaining variances from LDO requirements for
15 land divisions. However, LDO 14.000.2 requires a petition for
16 a variance to be submitted at the same time a preliminary
17 partition map is submitted, and requires the petition to state
18 fully the grounds relied upon for obtaining a variance. In
19 this case, no such petitions for variances were filed, and the
20 county's decision does not address the standards for granting a
21 variance found in LDO 14.000.3.A-D. We further note that it is
22 unclear under what authority the county approved petitioner's
23 requested "waivers" from the subsurface sewage disposal system
24 site approval requirement for Parcels 2 and 4, and from the
25 park fee requirement for Parcels 1 and 2.
26