

1 BAGG, Referee.

2 NATURE OF THE PROCEEDING

3 Petitioner appeals a condition imposed by the Deschutes
4 County Board of Commissioners in approving a minor land
5 partition. The condition requires the dedication of additional
6 right-of-way along the road serving the partition.

7 STANDING

8 Standing of petitioner has not been challenged.

9 FACTS

10 This case was submitted on stipulated facts. The
11 stipulated facts are attached, but we will discuss here the
12 facts relevant to our decision.

13 Petitioner applied for and received approval for a minor
14 land partition in May of 1979. In granting the partition, a
15 condition was imposed by the Planning Department requiring an
16 additional ten feet of right-of-way to be dedicated along
17 Pettigrew Road. That decision was appealed to the Planning
18 Commission, and in October of 1979, the Planning Commission,
19 inter alia, similarly required dedication of an additional ten
20 feet of right-of-way on Pettigrew Road. The Planning
21 Commission's decision was appealed to the Board of
22 Commissioners, and the Board of Commissioners modified the
23 order of the Planning Commission to require Pettigrew Road to
24 extend 30 feet to the east of its centerline. In order to
25 comply with the condition, petitioner would have to dedicate an

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1 additional five feet of right-of-way along the westerly edge of
2 his property.

3 The parties agree the ordinance applicable to this appeal
4 is the Deschutes County Land Partition Ordinance No. PL-7 and
5 the Comprehensive Plan entitled Bend Area General Plan.
6 Ordinance PL-7 provides for street standards that must conform
7 to the Deschutes County Road Department standards and
8 specifications for road construction. Ordinance PL-7, Section
9 9.200(2). One of the ordinance provisions allows the county to
10 require widening of existing streets..

11 "The dedication of additional right-of-way and
12 widening of the existing roadway may be required
13 whenever existing streets adjacent to or within a
14 tract are of inadequate width." Ordinance PL-7,
15 Section 9.320.

16 All of the design standards published by the Deschutes
17 County Department of Public Works and included in the file of
18 this case provide for minimum right-of-way width of 30 feet on
19 each side of the centerline of the roadway. The width of the
20 paved portion of the roadway and of the shoulder varies
21 depending on the kind of street involved. For example, local
22 and cul-de-sac streets require paving on 12 feet of each side
23 of the centerline, and a total road surface including shoulders
24 of 16 feet on either side of the centerline. A collector-urban
25 street has a 22 foot paved surface plus a variable shoulder
26 width and curbing. Pettigrew Road has a right-of-way of some
50 feet. The paved width of Pettigrew Road is between 24 and
28 feet at the points in question.

1 The county board found both local and collector streets
2 require a 60 foot wide right-of-way, and found the
3 classification of Pettigrew Road as either a local street or a
4 collector not to be important for the purposes of its decision
5 to require a widening in the right-of-way. The county board
6 also found that the "existing streets" language in Section
7 9.320 of Ordinance PL-7 includes both right-of-way and pavement
8 width. The board specifically found that Pettigrew Road was an
9 inadequate width "so long as it does not have 30 feet of
10 right-of-way on either side of its centerline" As the
11 county found Pettigrew Road lay within a right-of-way of less
12 than 30 feet on each side of its centerline, it required that
13 petitioner dedicate

14 "sufficient right-of-way to the public, as necessary,
15 to cause the right-of-way of Pettigrew Road to extend
 30 feet easterly of its centerline."

16 That additional dedication would bring the right-of-way up to a
17 full 60 feet in total width.

18 PETITIONER'S ASSERTION OF ERROR

19 Petitioner asserts the county is without authority to
20 require the additional right-of-way dedication. Petitioner
21 begins by noting partitioning regulations adopted by a county
22 pursuant to ORS 92.010 to ORS 92.160 include an authorization
23 for a county to adopt standards and procedures controlling
24 streets and street approval. Petitioner says that particular
25 statutory authority does not speak to the dedication of an
26 additional "right-of-way," but only to "width of streets." We

1 take petitioner to mean that the term "streets" includes only
2 the paved portions of a right of way. See ORS 92.044.

3 Petitioner then looks to the county comprehensive plan, the
4 Bend Area General Plan, and the county land partitioning
5 ordinance, Ordinance PL-7, and again finds that it is
6 inadequacy of street width only that enables the county to
7 require dedication of additional right-of-way. See Ordinance
8 PL-7, Section 9.320.

9 As to Pettigrew Road in particular, petitioner advises the
10 Bend Area General Plan does not list Pettigrew Road as a
11 collector or arterial street, and, therefore, Pettigrew Road
12 must be a local or cul-de-sac street. Given that designation,
13 Pettigrew Road would then be required to have a paved surface
14 of not less than 24 feet in width, and a total travel surface
15 of not less than 32 feet in width (pavement plus shoulder).
16 Petitioner says that Pettigrew Road exceeds the pavement width
17 required, having some 24 to 28 feet of pavement, and concludes
18 no further dedication of right-of-way is authorized.

19 Petitioner does not cite us, however, to any portion of the
20 record giving the width of the shoulders, if any, on Pettigrew
21 Road.

22 The county made a specific finding that it believed the
23 term "existing streets" to include "both right-of-way and
24 pavement width." In fact, the county includes in its findings
25 the reasons for this interpretation.

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1 "The reason for this is that if the pavement and
2 shoulders of a road coincide with the width of a
3 substandard right-of-way, the county would be
4 trespassing on private property if it used equipment
5 to construct or repair the shoulders or abate weeds,
6 cave-ins, or other hazards to the use of the road and
7 shoulder."

8 Because of this interpretation, the county concludes that
9 it is well within its powers to require petitioner to dedicate
10 an additional right-of-way. Under Section 9.320 of its
11 ordinance, Pettigrew Road lacked the required 30 feet of
12 right-of-way on either side of its centerline. As street and
13 right-of-way mean the same thing to the county, the county can
14 demand right-of-way dedication to meet its standards.

15 A county is able to interpret its own ordinance, so long as
16 that interpretation is reasonable. Anderson v. Peden, 284 Or
17 313, 587 P2d 59 (1978). The Board believes the county's
18 interpretation to be reasonable. There is no clear distinction
19 in Oregon statutory law between street and right-of-way.
20 Indeed, ORS 368.415, the statute discussing county road widths
21 and providing for acceptance of dedications of roadways, seems
22 to use the terms roads, highway and street interchangeably.
23 Similarly, ORS 92.010(10) defines road or street to mean a
24 "way" created to provide ingress or egress. The legislature
25 apparently saw no need for exactness in terms that we
26 understand petitioner to be asking of Deschutes County. In
27 order to be precise, the statute should talk of right-of-way as
28 a grant of property within whose boundaries a traveled portion
29 or street would be built. See "right-of-way" Blacks Law

1 Dictionary 1489 (4th ed 1968).

2 Other than is urged by petitioner, the county's own
3 ordinance offers no distinction between the terms.¹ In
4 Section 9.100 dedication of streets or roads is discussed. The
5 section talks of dedication of streets and roads and not
6 rights-of-way.

7 If, as petitioner says, the term street is only a paved
8 object for travel within a given right-of-way, then Section
9 9.100 should talk of dedication of right-of-way not street.
10 Surely the county would not limit itself to accepting
11 dedications only of paved "streets." Such a requirement would
12 be absurd. Admittedly, however, the county could have done a
13 better job distinguishing its terms. It does not follow,
14 however, that the county cannot interpret its ordinance as it
15 has done here. Its interpretation is consistent with the use
16 of the same terms in state law.

17 There is an additional policy reason for not adopting
18 petitioner's requested reading of the Deschutes County
19 partitioning ordinance. To require a strict distinction
20 between the terms would have the effect of stripping the county
21 of its ability to exercise the broad powers given it in ORS ch
22 92 and 368. Those broad powers over streets and roads are
23 given to promote safety of travel. As such, we believe the
24 ordinance should be construed literally to effectuate that
25 purpose.

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1 CONCLUSION

2 It is our view that the county does have the authority to
3 require as a condition of partition approval, the dedication of
4 additional right-of-way pursuant to Ordinance No. PL-7, Section
5 3.20. Petitioner's challenge is dismissed, and the action of
6 the county is sustained.

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FOOTNOTE

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Neither party saw fit to cite the Board to any definitions in Ordinance PL-7. There may be no definitions. We note, however, that Ordinance PL-2, the county's subdivision ordinances, defines street as

"The entire area between the right-of-way lines of any public way other than an alley used or intended to be used for vehicular traffic, including public ways designated as roads, highways, lanes, places, circles, avenues or by other similar designations."