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

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MERLE and HAZEL FAULKENDER,)
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 Petitioners,)
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 vs.)
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 HOOD RIVER COUNTY,)
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 Respondent,)
)
 and)
)
 HERMAN SCHNIDRIG and WINEFRIDE)
 SCHNIDRIG,)
)
 Intervenor-Respondent.)

LUBA No. 88-081
FINAL OPINION
AND ORDER

Appeal from Hood River County.

Merle and Hazel Faulkender, Mt. Hood, filed the petition for review and argued on their own behalf.

Sally A. Tebbet, Hood River, filed a response brief and argued on behalf of respondent.

Edward J. Sullivan, Portland, filed a response brief and argued on behalf of intervenors-respondent. With him on the brief was Mitchell, Lang and Smith.

HOLSTUN, Chief Referee, participated in the decision.

AFFIRMED 01/09/89

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Holstun

2 NATURE OF THE DECISION

3 Petitioners appeal the county's decision to deny their
4 request for a conditional use permit to allow their 1961
5 Trailorama mobile home (Trailorama) to remain on their property.

6 MOTION TO INTERVENE

7 Herman and Winefride Schnidrig move to intervene as
8 respondents in this proceeding. There is no opposition to the
9 motion, and it is allowed.

10 FACTS

11 This is the second time a decision of the county concerning
12 petitioners' Trailorama has been appealed to LUBA. In
13 Schnidrig v. Hood River County, ___ Or LUBA ___ (LUBA No.
14 87-053, October 28, 1987) we remanded the county's decision to
15 allow petitioners to use their Trailorama as a non-farm
16 dwelling on their Exclusive Farm Use (EFU) zoned parcel. The
17 county determined that the Trailorama was a "double-wide mobile
18 home" as defined in Hood River County Zoning Ordinance (HRCZO)
19 Section 16.05.B.¹ Under HRCZO Section 16.05.B.2, double-wide
20 mobile homes are considered conventional dwellings and thus may
21 be approved as non-farm dwellings in the EFU zone.

22 In Schnidrig v. Hood River County, supra, we remanded the
23 county's decision on three bases. First, we found the county
24 adopted inadequate findings to establish the Trailorama
25 "resembles a conventional house," as required by HRCZO Section
26 16.05.B.2. Second, we determined that the county's definition

1 of mobile home excludes all mobile homes manufactured prior to
2 1972.² Finally, we noted HRCZO Section 4.00 permits the
3 planning commission or planning director to allow, as a
4 conditional use, a use that is not expressly listed as
5 conditional uses in a zone "if such use or structure is
6 consistent with the subject zone and/or with other conditional
7 uses listed in the subject zone."³ We concluded, however,
8 that the county had not applied HRCZO Section 4.00 in reaching
9 its decision.

10 On remand, petitioners submitted an application for a
11 conditional use permit.⁴ Record 137. The planning
12 commission denied the conditional use permit and ordered
13 petitioners to

14 " * * * remove either the 1961 Trailorama or the 1986
15 double-wide mobile home from the 57 acre parcel * * *
on or before September 30, 1988."⁵ Record 49.

16 Petitioners appealed the planning commission decision to the
17 board of commissioners and the board of commissioners affirmed
18 the planning commission's denial on September 19, 1988. This
19 appeal followed.

20 DECISION

21 The petition for review does not contain separate
22 assignments of error as required by our rules.
23 OAR 661-10-030(3)(d). Petitioners appear pro se and we do not
24 believe petitioners' failure to follow our rules in this
25 proceeding warrants striking the petition for review or
26 dismissing the appeal. See Hilliard v. Lane County, 51 Or App

1 587, 595, 626 P2d 905 (1981). Accordingly, we will consider
2 petitioners' arguments, to the extent we can determine what
3 those arguments are and to the extent that they are stated
4 clearly enough in the petition for review to afford intervenors
5 an opportunity to respond. Bjerk v. Deschutes County, ___ Or
6 LUBA ___ (LUBA No. 88-067, November 22, 1988) slip op at 8-9;
7 Schoonover v. Klamath County, ___ Or LUBA ___ (LUBA No. 88-024,
8 August 3, 1988) slip op at 11, n 4.

9 We begin with a summary of the applicable approval
10 criteria, followed by a summary of the county's decision and
11 the basis given for denial, before turning to petitioners'
12 arguments.

13 A. Applicable Approval Criteria

14 As explained in our earlier discussion of the prior appeal
15 concerning petitioners' Trailerama, the definition of mobile
16 home contained in HRCZO Sections 3.00 and 16.05.B, n 1 supra,
17 prevents approval of petitioners' Trailerama as a mobile home.
18 Petitioners do not argue the county amended the HRCZO
19 definition of mobile home to encompass structures such as
20 petitioners that were manufactured before 1972. Accordingly,
21 as a matter of law, the 1961 Trailerama is not a mobile home as
22 that term is used in the HRCZO.⁶

23 Even though the Trailerama is not a double-wide or
24 single-wide mobile home as defined in the HRCZO, HRCZO Section
25 4.00 provides a procedure whereby the Trailerama could be
26 approved, if the approval criteria contained in Section 4.00

1 are met. See n 3, supra. The applicable criteria in Section
2 4.00 require petitioners to demonstrate that the Trailerama
3 "is consistent with the subject zone and/or with other
4 conditional uses listed in the subject zone."

5 B. County's Order

6 The board of commissioner's decision adopted the planning
7 director's March 2, 1988 staff report as findings in support of
8 its decision. The findings state that although "the 1961
9 Trailerama could be consistent with other conditional uses
10 listed in the EFU zone, * * * it cannot comply with the EFU
11 Ordinance provisions." Record 128. We understand this
12 statement to be a conclusion that approval of the Trailerama as
13 a conditional use would not be consistent with the EFU zone
14 even though it might be consistent with listed conditional
15 uses. This conclusion is followed by a number of findings
16 explaining the purpose of the EFU zone and the manner in which
17 certain dwellings may be allowed in the EFU zone. Those
18 findings state the Trailerama could not be approved pursuant to
19 any of those provisions. Record 128, 130-131. The findings
20 also identify evidence in the record concerning whether a
21 Trailerama resembles a conventional dwelling and conclude the
22 Trailerama is, at best, a single-wide mobile home. Record 132.

23 The county's findings, in addition, note "[t]he applicant
24 never addressed the Burden of Proof requirements." Record
25 133. We understand this finding to be a determination that the
26 applicant failed to address the applicable criteria in HRCZO

1 Section 4.00.⁷

2 C. Petitioners' Arguments

3 Petitioners make a number of arguments on pages 3-5 of the
4 petition for review. We address those arguments below.

5 1. Improper Contacts With Planning Staff

6 Petitioners argue they were told by two planning commission
7 members that the planning director called the planning
8 commission members together before they reached a decision in
9 this matter⁸ and advised the planning commission to deny the
10 requested conditional use permit.

11 We are cited to no evidence in the record that would
12 support petitioners' claim. Under ORS 197.830(11)(c) and our
13 rules petitioners may request an evidentiary hearing to present
14 evidence of

15 "ex parte contacts or other procedural irregularities
16 not shown in the record * * * which, if proved, would
warrant reversal or remand of its decision."
17 OAR 661-10-045(1).

18 Petitioners made no such request, and we therefore have no
19 basis upon which to conclude such contacts occurred.

20 Further, we note planning commission members are entitled
21 to receive policy advice from their planning staff, and such
22 contacts are not viewed as ex parte contacts. ORS 215.422(4).
23 See Dickas v. City of Beaverton, 92 Or App 168, 172, ___
24 P2d ___ (1988); Flynn v. Polk County, ___ Or LUBA ___ (LUBA No.
25 88-047, October 19, 1988). Although petitioners' point could
26 be that a meeting of a majority of the planning commission to

1 deliberate toward a final decision in this matter violated
2 state public meeting laws or resulted in improper bias, see
3 1000 Friends of Oregon v. Wasco County Court, 304 Or 76, 742
4 P2d 39 (1987), petitioners do not develop such arguments. We
5 will not develop such arguments for petitioners. Deschutes
6 Development v. Deschutes County, 5 Or LUBA 218, 220 (1982).

7 2. Petitioners' Constitutional Arguments

8 Petitioners argue they believe their constitutional rights
9 are being denied. Petition for Review 4. Petitioners cite the
10 Fourth Amendment and state they have been denied freedom of
11 life, liberty and * * * pursuit of happiness." Id.⁹

12 LUBA is empowered to reverse or remand a land use decision
13 if we find it to be unconstitutional. ORS 197.835(8)(a)(E).
14 However, LUBA consistently has held that parties may not simply
15 claim their constitutional rights are violated and leave it to
16 this Board to (1) identify the constitutional provisions
17 petitioners feel are violated and (2) supply the legal argument
18 or reasoning that might lead us to conclude that the state or
19 federal constitution are violated by the decision. Pierron v.
20 Eugene, 8 Or LUBA 311, 118 (1983); Constant v. Lake Oswego, 5
21 Or LUBA 311, 327 (1982); Van Sant v. Yamhill Co., 4 Or LUBA
22 359, 362 (1982).

23 In this proceeding petitioner provides us with no argument
24 that could lead us to reversal or remand on constitutional
25 grounds. We therefore reject petitioners' claim that the
26 county violated their constitutional rights in denying the

1 conditional use permit.

2 3. Appearance and Impact of the Trailerama

3 Petitioners argue the Trailerama will resemble a
4 conventional home when set up properly. Petitioners attach
5 three letters in support of their view that the Trailerama
6 should be viewed as a double-wide mobile home. Petitioners
7 also attach an artist's sketch which they argue shows the
8 Trailerama looks like a conventional home. Petitioners further
9 argue the Trailerama looks just as much like a conventional
10 home as other houses in the area which they describe as

11 "a remodeled packing house - * * * a California-type
12 home - * * * [two older remodeled homes and] the
13 glorified Llama barn where our adjoining neighbor
lives." Petition for Review 5.

14 Petitioners also argue the Trailerama will not adversely affect
15 adjoining properties.

16 The above arguments appear to be a restatement of
17 petitioners' position that the Trailerama qualifies or should
18 qualify as a double-wide mobile home under the HRCZO. That
19 issue, as we have explained, was decided adversely to
20 petitioners in Schnidrig v. Hood River County, supra.

21 Petitioners arguments provide no basis for us to remand the
22 county's decision. Petitioners arguments do not demonstrate
23 that approval of the Trailerama "will be consistent with the
24 [EFU] zone and/or with other conditional uses listed in the
25 [EFU] zone" as HRCZO Section 4.00 requires. At most,
26 petitioners' argument could be taken to claim the Trailerama

1 (1) is a conventional dwelling, (2) resembles a conventional
2 dwelling or (3) is consistent with conventional dwellings.

3 The county found non-farm dwellings can be approved under
4 the HRCZO as a conditional use; but that non-farm dwellings
5 must be double-wide mobile homes or other conventional
6 dwellings, not single-wide mobile homes. Record 128. The
7 county found the Trailerama is "at best a single-wide mobile
8 home." Record 132. There is substantial evidence in the
9 record to support the county's position. Record 145,
10 147-149.¹⁰ We understand the county to have found the
11 Trailerama may be consistent with a single-wide mobile home but
12 is not consistent with a double-wide mobile home or other
13 conventional dwellings which are allowed in the EFU zone as
14 conditional uses. Petitioners' arguments about the appearance
15 of the Trailerama and the evidence they cite provide an
16 insufficient basis for us to substitute our judgment for that
17 of the county.

18 4. The Site Visit

19 Petitioners' final argument is that only five out of the
20 total 14 planning commissioners and county commissioners made a
21 site visit to view the Trailerama. Petitioners argue this is
22 not fair because only those familiar with the case should
23 participate.

24 Petitioners cite no legal requirement that the planning
25 commission or board of commissioners is required to conduct a
26 site view. The record in this matter contains numerous

1 interior and exterior photographs of the Trailerama. Record
2 150-159. Petitioners do not explain why those photographs and
3 other photographs included in the record were not sufficient to
4 provide an adequate factual base for the planning commission
5 and board of commissioners to render their decisions.
6 Petitioners cite no legal authority, and we are aware of none,
7 that would require the planning commission or board of
8 commissioners to take the additional step of conducting a site
9 visit. Accordingly, their failure to view the site provides no
10 basis for reversal or remand.

11 D. Conclusion

12 As explained above, the county found petitioners failed to
13 carry their burden to secure a conditional use permit under
14 HRCZO Section 4.00. Petitioners' arguments provide us with no
15 basis upon which to reverse or remand the county's decision.
16 Accordingly, the county's decision is affirmed.

FOOTNOTES

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HRCZO Section 16.05.B provides:

4 "B. Mobile Home: A vehicle or structure constructed for
5 movement on the public highway, that has sleeping,
6 cooking and plumbing facilities, is intended for human
7 occupancy and is being used for residential purposes.
8 A mobile home includes either a mobile home
9 manufactured after May 1, 1972, which exhibits the
10 Oregon Department of Commerce Insignia of Compliance
11 indicating it is manufactured to the State Mobile Home
12 Construction Standards, or a mobile home manufactured
13 after June 5, 1976, which exhibits the Oregon
14 Department of Commerce "Insignia of Compliance" that
15 indicates conformance with the Federal Housing & Urban
16 Development (HUD) Construction Standards. The above
17 definitions do not make a distinction between a
18 single-wide or double-wide mobile home, however Hood
19 River County does differentiate. Some different
20 characteristics and features include:

21 "1. Single-Wide: Single chassis; approximately 14+
22 wide; length, 40-70 feet; can have "tip-outs" or
23 expansion areas for living purposes; except for
24 mobile home parks, single-wides are not permitted
25 outright in any zoning district; they are not
26 considered similar to conventional dwellings, nor
27 are they allowed to replace conventional
28 dwellings; single-wides require either approval
29 by the County Planning Department or a County
30 conditional use permit prior to being placed on a
31 lot or parcel in Hood River County, and they must
32 comply with the definitions in paragraph B. above.

33 "2. Double-Wide: Is the result of the combination or
34 joining of two or more chassis or sections;
35 length, 40-70 feet; resembles a conventional
36 house; affixed to real property by a continuous
37 concrete wall foundation or other appropriate
38 foundation; are permitted uses in Hood River
39 County; are considered conventional dwellings and
40 must comply with the definitions in paragraph B.
41 above.

42 HRCZO Section 3.00 contains an identically worded
43 definition of "Mobile Home."

44 / / /

1 _____
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3 Thus, while mobile homes manufactured before 1972 may be
4 mobile homes in a generic sense, they are not "mobile homes" as
5 the HRCZO uses that term, no matter how much they may resemble
6 a conventional dwelling.

7 _____
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9 HRCZO Section 4.00 provides in its entirety:

10 "No structure or lot shall hereafter be used or
11 occupied and no structure or part thereof shall be
12 erected, moved, reconstructed, extended, enlarged, or
13 altered contrary to the provisions of this ordinance
14 provided, however, that a proposed use or structure
15 not expressly listed under 'conditional uses' may be
16 considered by the planning commission or planning
17 director as a conditional use if said use or structure
18 is consistent with the subject zone and/or with other
19 conditional uses listed in the subject zone."

20 _____
21

22 In the portion of the conditional use permit application
23 requiring the applicant to describe the project in detail,
24 petitioners stated:

25 "We want to place our double-wide Trailerama on one of our
26 five acre parcels to rent or sell preferably - to
supplement our income and help sustain us in our retirement
years." Record 137.

27 _____
28

29 The reference to the 1986 double-wide mobile home is an
30 aspect of this dispute that is not at issue in this appeal.
31 Apparently the 1986 double-wide mobile home was moved onto
32 petitioners' property without county permission, but was
33 allowed to remain on the condition the 1961 Trailerama would be
34 removed. Record 128. There is also discussion in the county's
35 order that the county views the Trailerama as a preexisting
36 nonconforming use; and, as such, the Trailerama could remain on
the property, provided the 1986 double-wide mobile home is
moved to a different parcel or lot.

37 _____
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39 We are aware of no legal requirement that Hood River County
40 adopt the definition of mobile home that it adopted. However,
41 unless the definition it adopted is changed to include pre-1972

1 mobile homes, the 1961 Trailorama is not a mobile home under
2 the HRCZO.

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4 The petitioners' application did include a single page with
5 the heading "Burden of Proof" with 10 numbered statements.
6 Record 141. However, with the possible exception of statement
7 number three which describes the appearance of the Trailorama,
8 none of those statements address the criteria in Section 4.00.

9

8

10 The petitioner refers to the "September 6, 1988 decision."
11 The planning commission took its final action in this matter on
12 March 25, 1988. A hearing was held before the board of
13 commissioners on September 6, 1988 prior to entry of their
14 final decision in this matter on September 19, 1988. We cannot
15 tell whether petitioners' reference to the date of the planning
16 commission's decision is in error or whether they claim the
17 board of commissioners also met with the planning director. We
18 will assume petitioners' only claim improper contact with the
19 planning commission.

20

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21 We suspect petitioners meant to cite the Fifth or
22 Fourteenth Amendments of the U.S. Constitution which provide in
23 part that no person shall be deprived "of life, liberty or
24 property, without due process of law * * * ."

25

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26 The evidence includes letters from the Oregon Manufactured
27 Housing Association and Oregon Department of Commerce, Building
28 Codes Division, all of which support the county's conclusion
29 that if the Trailorama is properly viewed as a mobile home at
30 all, it is most like a single-wide mobile home.