BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

MARY LYNNE PERRY and, CHRISTOPHER J. BOWER, Petitioners, vs. YAMHILL COUNTY, Respondent, and PAUL BRENNEKE, Intervenor-Respondent.	LUBA No. 93-072 FINAL OPINION AND ORDER

Appeal from Yamhill County.

Mary Lynne Perry and Christopher J. Bower, San Diego, California, filed the petition for review. Christopher J. Bower argued on his own behalf.

No appearance by respondent.

Michael C. Robinson and Steven L. Pfeiffer, Portland, filed the response brief on behalf of intervenor-respondent. With them on the brief was Stoel Rives Boley Jones & Grey. Michael C. Robinson argued on behalf of intervenor-respondent.

SHERTON, Referee; KELLINGTON, Chief Referee; HOLSTUN, Referee, participated in the decision.

AFFIRMED 10/07/93

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

Opinion by Sherton.

NATURE OF THE DECISION

Petitioners appeal an order of the board of county commissioners determining that the two lots constituting phase 1 of a 15-lot subdivision comply with three conditions imposed by a previous county decision granting preliminary subdivision plat approval.

MOTION TO INTERVENE

Paul Brenneke, the applicant below, moves to intervene in this proceeding on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

The subject 15.78 acre parcel is owned by intervenor and consists of an open field sloping to the southeast, with no structures or improvements. Access is from Viewmont Drive, a county road adjoining the subject parcel to the south. The subject parcel is designated Very Low Density Residential on the Yamhill County Comprehensive Plan map and is zoned Very Low Density Residential (VLDR-1).[1]

Adjoining properties to the west, north and east are also zoned VLDR-1. The property to the west is in rural residential use. The property to the north is timbered and vacant. The property to the east is a vineyard owned by

[1]The subject parcel and the adjoining VLDR-1 zoned properties are part of an area for which the county has adopted an exception to Statewide Planning Goal 3 (Agricultural Lands), on the basis of commitment to rural residential use.

petitioners. The property across Viewmont Drive to the south is within the city limits of the City of Dundee and is zoned for residential use.

In December of 1991, intervenor filed an application for preliminary plat approval for a 15-lot subdivision on the subject parcel. Each lot was proposed to be approximately one acre in size. The proposal included a request to develop the subdivision in two phases. Phase 1 consists of two lots adjoining Viewmont Drive, and Phase 2 consists of the remaining 13 lots.

The county planning commission granted preliminary plat approval. Petitioners appealed the planning commission's decision to the board of commissioners. On June 10, 1992, the board of commissioners issued an order granting preliminary plat approval (1992 decision), subject to 15 conditions. Four of those conditions are at issue in this appeal. Condition 14 provides that "[f]inal plat approval may occur in the two phases noted in the application." Record 135. Conditions 8, 10 and 11, discussed in detail infra, essentially defer determinations of compliance with three subdivision standards in Yamhill County Land Division Ordinance (YCLDO) Chapter 6 (General Design Standards) concerning drainage (YCLDO 6.030(6)), water supply (YCLDO 6.090) and sewage disposal (YCLDO 6.100). Conditions 8, 10 and 11 also require the board of commissioners to hold a public hearing before making determinations of compliance

with these standards.

On August 5, 1992, intervenor's attorney sent the county a letter stating that intervenor "is prepared to proceed with final [plat] review of Phase 1 of the proposed development."[2] Record 130. The letter requests that the board of commissioners schedule a public hearing, in order to make the determinations of compliance with YCLDO 6.030(6), 6.090 and 6.100 required by Conditions 8, 10 and 11 of the June 10, 1992 order. On April 21, 1993, after holding public hearings, the board of commissioners issued the challenged order determining that Conditions 8, 10 and 11 are satisfied with regard to the two lots comprising Phase 1 of the proposed subdivision.[3]

FOURTH ASSIGNMENT OF ERROR

On January 27, 1993, the board of commissioners held a public hearing on intervenor's request for a determination that Phase 1 of the proposed subdivision complies with Conditions 8, 10 and 11 of the 1992 decision. The board of commissioners scheduled a subsequent hearing for March 10, 1993. Petitioner Bower requested that the hearing be

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[2]We note, however, that no application for Phase 1 final plat approval appears in the record, and that the challenged decision does not grant final plat approval for Phase 1 of the proposed subdivision.

[3]A central issue in this case, discussed in detail under the sixth assignment of error, infra, is whether under the June 10, 1992 order, compliance with Conditions 8, 10 and 11 may be determined separately with regard to the two lots in Phase 1 or, rather, must be determined for the entire 15-lot proposed subdivision.

rescheduled to March 24, 1993, because petitioner Perry was scheduled to have surgery on March 10. Petitioner Bower also informed the county that after March 24, he would be out of the country until April 12, 1993. After ascertaining that intervenor's attorneys were not available on March 24, but would be available on March 17, the county rescheduled the hearing for March 17, 1993.

Petitioners contend this Board should reverse the county's decision under ORS 197.835(7)(a)(E), as being unconstitutional, because the county violated petitioners' "due process rights" by failing to grant their request to reschedule the final hearing to March 24, 1993. Petition for Review 28. Petitioners argue the county's refusal prejudiced their right to present argument, and rebut intervenor's evidence, at the final county hearing.

This Board has stated on numerous occasions that it will not consider claims of constitutional violations where the parties raising such claims do not supply legal argument in support of those claims. Joyce v. Multnomah County, 23 Or LUBA 116, 118, aff'd 114 Or App 244 (1992); Van Sant v. Yamhill County, 17 Or LUBA 563, 566 (1989); Chemeketa Industries Corp. v. City of Salem, 14 Or LUBA 159, 165-66 (1985); Mobile Crushing Company v. Lane County, 11 Or LUBA 173, 182 (1984). Accordingly, we decline to consider petitioners' undeveloped claim of denial of due process.

The fourth assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

Petitioners contend the county violated state and local law by improperly placing the burden of proof on petitioners, the opponents of the subdivision, rather than on intervenor, the applicant. Fasano v. Washington Co. Comm., 264 Or 574, 507 P2d 23 (1973).

Petitioners' argument under this assignment of error refers primarily to events that occurred during the prior county proceedings leading to the 1992 preliminary plat approval decision. No party appealed the county's 1992 preliminary plat decision. The county's 1992 decision, and any errors that allegedly occurred in the proceedings leading to that decision, are not before us in this appeal. Rodriguez v. Marion County, ___ Or LUBA ___ (LUBA No. 93-077, October 4, 1993), slip op 10. Petitioners cite nothing establishing the county improperly shifted the burden of proof regarding compliance with Conditions 8, 10 and 11 to petitioners during the proceedings leading to the county decision challenged in this appeal.

The third assignment of error is denied.

FIFTH AND SIXTH ASSIGNMENTS OF ERROR

In these assignments of error, petitioners challenge the county's decision with regard to allowing the proposed subdivision to be approved in two phases.

A. Phased Final Plat Approval

Petitioners contend the county violated the state

subdivision statute and the YCLDO when it allowed final plat approval for the proposed subdivision to proceed in two phases, the first of which includes only two lots.

There is no dispute that Condition 14 of the 1992 decision purports to allow the county to separately grant final plat approval for the two-lot Phase 1 and the 13-lot Phase 2.[4] Record 135. The 1992 decision is a final land use decision that was not appealed to this Board. Petitioners may not challenge, in this appeal, determinations that were made in the 1992 decision. Headley v. Jackson County, 19 Or LUBA 109, 115 (1990).

This subassignment of error is denied.

B. Phased Determinations of Compliance with Conditions 8, 10 and 11

Petitioners contend the county erred by interpreting the 1992 decision to allow determination of the compliance of Phase 1 of the proposed subdivision with Conditions 8, 10 and 11, and to grant final plat approval for Phase 1, without determining that the entire subdivision, including Phase 2, satisfies Conditions 8, 10 and 11. Petitioners argue the 1992 decision requires the county to find that all lots in all phases of the subdivision satisfy YCLDO 6.030(6), 6.090 and 6.100 with regard to drainage, water supply and sewage disposal, before allowing the

[4]Condition 14 provides that "[f]inal plat approval may occur in the two phases noted in the application." Record 135.

development of Phase 1.

Conditions 8, 10 and 11 are worded identically, except in their references to three different YCLDO sections:

> "Prior to the final plat approvals for Phase 1 and for Phase 2 of the proposed subdivision, the Board [of Commissioners] shall conduct a public hearing to determine whether the application complies with [YCLDO 6.090/6.100/6.030(6)]. No final plat approval shall be granted until the applicant first demonstrates that each lot within each phase of the proposed subdivision [has met the requirements of YCLDO 6.090/6.100/6.030(6)]." Record 134-35.

In the challenged decision, the county interpreted Conditions 8, 10, 11 and 14 as follows:

> "[Condition] 14 states: 'Final plat approval may occur in the two phases noted in the application.' In addition, condition[s] 8, 10 and 11 contain express recognition that final plat approval, including compliance with these and other conditions of preliminary [plat] approval, may occur in the phases noted above, thereby establishing an intent that any analysis of compliance with each of the conditions of preliminary [plat] approval will necessarily be undertaken on the basis of individual phases rather than the entire plat as a whole. <u>While condition[s] 8, 10 and 11 state that no final plat approval will be granted absent a demonstration of compliance for each lot in each phase, there is no indication from this language that both phases and all lots therein must be the subject of such a determination of compliance as a condition precedent to determining compliance for Phase 1</u>.
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> "For the above reasons, it is the determination of the Board [of Commissioners] that the intent and purpose of the above-referenced language contained in condition[s] 8, 10, 11 and 14 is to allow the applicant to proceed with obtaining final plat approval on a phased basis rather than on the

> basis of the entire subdivision. Since final plat approval may be granted on a phased basis pursuant to condition 14 and such approval is contingent on a determination of compliance with individual conditions 8, 10 and 11, it would be inconsistent with the repeated acknowledgment of phased final plat approval to require compliance [with conditions 8, 10 and 11] for each lot within the entire subdivision as a condition of Phase 1 approval * * *. While * * * conditions 8, 10 and 11 * * * require a demonstration of compliance with these same conditions for each lot within each phase presented for final plat approval, * * * the express language contained in these conditions and condition 14 allows the applicant to defer a determination of compliance with these conditions for all lots contained within Phase 2 until such time as final plat approval for this latter phase is sought by the applicant." (Emphasis added.) Record 4-5.

Intervenor argues that because the 1992 decision specifically approves granting final plat approval in two phases, it is consistent for the county to interpret conditions 8, 10 and 11 to allow intervenor to obtain a determination of compliance with those conditions, and final plat approval, for Phase 1 alone, rather than the entire subdivision. Intervenor argues that under Clark v. Jackson County, 313 Or 508, 836 P2d 710 (1992), this Board must defer to the county's interpretation of its 1992 decision.

Under ORS 197.835(7)(a)(D), we are authorized to reverse or remand the county's decision if it "improperly construed the applicable law." The Oregon Supreme Court addressed the scope of our review under ORS 197.835(7)(a)(D) in Clark v. Jackson County, supra. In that case, the applicable law in question was a county zoning ordinance.

The court held this Board is required to defer to a local government's interpretation of its own ordinance, unless that interpretation is contrary to the express words, policy or context of the local enactment. Clark v. Jackson County, 313 Or at 514-15. Subsequent court of appeals decisions have made it clear that under Clark v. Jackson County, we must defer to a local government's interpretation of its own enactment, unless that interpretation is "clearly wrong." Goose Hollow Foothills League v. City of Portland, 117 Or App 211, 217, 843 P2d 992 (1992); West v. Clackamas County, 116 Or App 89, 93, 840 P2d 1354 (1992).

Under this subassignment, we must determine whether the county improperly construed its 1992 decision as allowing it to determine the compliance of Phase 1 of the proposed subdivision with Conditions 8, 10 and 11, and to grant final plat approval for Phase 1, without also determining that the entire subdivision satisfies Conditions 8, 10 and 11. Petitioners do not dispute intervenor's contention that the ruling of Clark v. Jackson County, with regard to our scope of review under ORS 197.835(7)(a)(D), applies where the "applicable law" is a prior local government order in a quasi-judicial proceeding, as opposed to a local government ordinance, and we do not see that it makes a difference. The rationale of Clark v. Jackson County applies wherever the "applicable law" interpreted by the challenged decision was adopted by the local government that made the challenged

decision.

We agree with intervenor that the county's interpretation of Conditions 8, 10 and 11 of its 1992 decision is not clearly wrong. There is nothing in the wording of those conditions that prohibits the county from determining compliance with those conditions for the lots in Phase 1 separately from determining compliance for the lots in Phase 2. A closer question is whether those conditions allow the county to grant final plat approval for Phase 1 before having determined that both Phase 1 and Phase 2 comply with YCLDO 6.030(6), 6.090 and 6.100.[5] We defer to the county's interpretation that its 1992 decision allows it to grant final plat approval for a phase of the proposed subdivision, so long as each lot in the phase of the subdivision for which final plat approval is sought has been found to comply with YCLDO 6.030(6), 6.090 and 6.100.[6]

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[5]Although the county did not actually grant final plat approval for Phase 1 as part of the challenged decision, the decision includes a determination that the 1992 decision allows it to do so in the future, without first determining that Phase 2 satisfies Conditions 8, 10 and 11 of the 1992 decision.

[6]We note the county's interpretation is not inconsistent with YCLDO 6.030(6), 6.090 or 6.100. Nothing in the YCLDO requires that these standards be satisfied for every lot in a proposed subdivision, at the time of preliminary plat approval. YCLDO 6.090 provides that a final plat of a subdivision cannot be approved unless certain assurances are provided that there is an adequate water supply for "each and every parcel depicted on the final plat." Because the 1992 decision authorized final plat approval in two phases, YCLDO 6.090 can be interpreted to require only that the lots shown on each phase of the final plat be shown to have an adequate water supply, prior to final plat approval for that phase. YCLDO 6.100 contains similar wording with regard to sewage disposal for the lots shown on the final plat. YCLDO 6.030(6) (Lot Drainage) includes no reference

This subassignment of error is denied.

The fifth and sixth assignments of error are denied.

FIRST, SECOND AND SEVENTH ASSIGNMENTS OF ERROR

In these assignments of error, petitioners challenge the county's determinations of compliance with conditions 8, 10 and 11 of the 1992 decision.[7]

A. Water Supply (Condition 8)

Condition 8 requires that each lot in Phase 1 "has a quality and quantity of water to support the proposed use of the land and demonstrates compliance with [YCLDO] 6.090[(1), (2) or (3)]." Record 134. YCLDO 6.090 requires the lots in Phase 1 to have "an adequate quantity and quality of water to support the proposed use of the land." YCLDO 6.090(1)-(3) require this to be shown by (1) a certification by a municipal, public utility or community water supply system, (2) a bond, contract or other assurance by the subdivider, or (3) a water well report for each well provided within the subdivision.

The challenged decision finds the proposed use of the land is one single family dwelling on each of the two lots

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identifying the stage of the subdivision approval process at which it must be satisfied.

[7]Some of petitioners' arguments depend on their contention that the county must determine compliance with Conditions 8, 10 and 11 with regard to the entire subdivision. We reject this contention under the preceding assignments of error and do not address these arguments further here. Petitioners' arguments applicable to the county's determination of compliance with Conditions 8, 10 and 11 for the two lots in Phase 1 are addressed below.

in Phase 1. Record 8. It finds compliance with YCLDO 6.090 and Condition 8 based on reports concerning a single existing well that is proposed to serve the two lots. Petitioners challenge the county's interpretation of YCLDO 6.090 and the evidentiary support for the county's determination of compliance.

1. Interpretation

Petitioners contend the challenged decision erroneously interprets YCLDO 6.090 not to require consideration of impacts on adjacent properties that will result from providing water to the proposed development.[8] Petitioners argue this interpretation of YCLDO 6.090 is inconsistent with the interpretation of YCLDO 6.090 expressed by the county in its 1992 decision. Petitioners further argue that they would be prejudiced by the county changing its interpretation, because they relied on the interpretation expressed in the 1992 decision when they decided not to appeal that decision.

The challenged decision interprets YCLDO 6.090 in this regard as follows:

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[8]Petitioners also argue the challenged decision erroneously states that adverse impacts to the water supply of adjoining properties were addressed in the 1992 decision, under YCLDO standards other than YCLDO 6.090. However, we determine below that the county correctly interpreted YCLDO 6.090 not to require consideration of impacts on adjoining properties. Therefore, even if the statement in the challenged decision that such impacts were addressed in the 1992 decision is incorrect, that would not provide a basis for reversal or remand. The only issue before us is whether the county improperly construed or applied YCLDO 6.090 in the challenged decision.

> "* * * Condition 8, which implements [YCLDO 6.090,] requires the applicant to demonstrate that each lot has a quality and quantity of water to support the proposed use of the land. * * *
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> "[YCLDO 6.090 does] not require a demonstration that the provision of an adequate quality and quantity of water to the proposed dwellings on these two lots shall not result in the limitation of the [supply or] quality of water to other uses within the vicinity of the lots or otherwise will not adversely affect such off-site uses or activities. * * *" Record 8.
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> "[YCLDO 6.090] requires only that the applicant demonstrate the availability of a water source of sufficient quality and quantity to serve two single family dwellings and does not require an assessment of impacts on surrounding properties, if any, stemming from such service. * * *" Record 10.

The county's interpretation of YCLDO 6.090 is consistent with its words, context and policy. Clark v. Jackson County, supra. The language of YCLDO 6.090 addresses only the adequacy of water supply to the subject subdivision lots, not impacts on other properties. Additionally, we do not believe there is any inconsistency between the county's interpretations of YCLDO 6.090 in the challenged decision and in the 1992 decision. The 1992 decision also states YCLDO 6.090 requires the subject subdivision lots "to have an adequate quantity and quality of water to support the proposed use." Record 138. The 1992 decision goes on to summarize evidence submitted by the applicant and opponents, but does not interpret YCLDO 6.090 with regard to whether it requires consideration of impacts

on the water supplies of adjacent properties.[9]

This subassignment of error is denied.

2. Evidentiary Support

Petitioners challenge the adequacy of the evidentiary support for the county's determination of compliance with YCLDO 6.090. Petitioners argue there is no evidence in the record to refute a conclusion in a report by CH2M Hill that the subject site has the same geologic characteristics as another site where the Water Resources Department has imposed strict restrictions on ground water development. Petitioners also argue the record is replete with unrefuted evidence concerning existing water problems in the area of the proposed development.[10]

Intervenor argues the record contains reports by a hydrologist and geological engineer and well tests which show that the existing well proposed to serve the two lots

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[9]In the 1992 decision, after stating that other persons testified they had difficulties in "recharging" their wells in summer months, the county observed that "it was not established that their water came from the same source as the water which is proposed to service the subdivision." Record 139. However, this observation does not establish the county interpreted YCLDO 6.090 to require consideration of off-site impacts. If it were established that the other persons' water came from the same source as that of the proposed subdivision, then their testimony would have been relevant to whether that source of water is adequate to serve the proposed subdivision itself.

[10]Petitioners also argue there is no evidence in the record to rebut the evidence concerning adverse impacts on the water supplies of adjoining properties. However, as explained under the preceding subassignment of error, the county correctly interpreted YCLDO 6.090 not to require consideration of potential impacts on adjoining properties.

in Phase 1 yields enough water to serve two single family dwellings, that the water is of adequate quality and that contamination of the well's water from sewage or other activities in the well's recharge area is unlikely.

Substantial evidence is evidence a reasonable person would rely on in reaching a decision. City of Portland v. Bureau of Labor and Ind., 298 Or 104, 119, 690 P2d 475 (1984); Bay v. State Board of Education, 233 Or 601, 605, 378 P2d 558 (1963); Van Gordon v. Oregon State Board of Dental Examiners, 63 Or App 561, 567, 666 P2d 276 (1983). Where we conclude a reasonable person could reach the decision made by the local government, in view of all the evidence in the record, we defer to the local government's choice between conflicting evidence. Younger v. City of Portland, 305 Or 356, 360, 752 P2d 262 (1988); Angel v. City of Portland, 22 Or LUBA 649, 659, aff'd 113 Or App 169 (1992); Douglas v. Multnomah County, 18 Or LUBA 607, 617 (1990).

We have reviewed the evidence in the record cited by the parties. We agree with intervenor that based on this evidence, a reasonable person could conclude the existing well proposed to serve the two lots of Phase 1 will provide a quantity and quality of water adequate to serve the proposed use of those lots, as required by YCLDO 6.090.

This subassignment of error is denied.

B. Sewage Disposal (Condition 10)

Condition 10 requires compliance with YCLDO 6.100, through a demonstration that each lot "either [has] an approved subsurface septic site evaluation or [will] be connected to a sewage treatment facility approved by the State Department of Environmental Quality." Record 134. The decision finds compliance with YCLDO 6.100 and Condition 10 based on intervenor's submittal of septic site evaluation reports, approved by the county sanitarian, for each of the two lots in Phase 1 of the proposed subdivision.

Petitioners contend the county's determination of compliance with YCLDO 6.100 is not supported by substantial evidence because there is no evidence in the record refuting statements in a CH2M Hill report that the slow permeability of soils on the subject property results in "potentially severe limitations for sewage disposal by septic tank[s] and leach fields."[11] (Emphasis added.) Record 270.

The CH2M Hill report also states that a "site-specific evaluation of the proposed subdivision will be required to adequately evaluate the feasibility of using private septic systems." Id. The septic site evaluation reports submitted by intervenor, approved by the County Sanitarian, indicate

[11]Petitioners also argue there is no evidence in the record to refute reasonable concerns raised below regarding contamination of existing water sources on nearby properties by septic systems on the subject property. However, for the same reasons we explained previously with regard to YCLDO 6.090, the county correctly interpreted YCLDO 6.100 not to require consideration of potential impacts on adjoining properties.

that a site specific evaluation of the two lots in Phase 1 of the subdivision was performed. Record 108-17. Based on these approved reports, a reasonable person could conclude the two lots in Phase 1 satisfy the requirements of YCLDO 6.100 and Condition 10.

This subassignment of error is denied.

C. Drainage (Condition 11)

Condition 11 requires compliance with YCLDO 6.030(6), which provides:

> "Lot Drainage. Lots shall be laid out to provide positive drainage away from all buildings. Individual lot drainage shall be coordinated with the general stream drainage pattern for the area. Drainage shall be designed to avoid unnecessary concentration of storm drainage water from each lot to other lots or parcels. Drainage systems shall be designed and constructed to the specifications that may hereafter be adopted by Board [of Commissioners] order * * *."

On December 11, 1992, intervenor submitted a map entitled Preliminary Drainage Ditch Plan to Serve Proposed Subdivision (Drainage Plan), and an accompanying report, prepared by a registered professional engineer. Record 81-85, 101. The Drainage Plan shows a proposed drainage ditch running from approximately where the two lots of Phase 1 of the proposed subdivision adjoin, along the north side of Viewmont Drive, to an existing 18 inch drainage pipe on the edge of an existing subdivision which is located south of Viewmont Drive and to the east of the proposed subdivision. The Drainage Plan also indicates the

size and grade of the proposed drainage ditch.

The county found the Drainage Plan satisfies YCLDO 6.030(6) and Condition 11 with regard to the two lots of Phase 1:

> "* * * The applicant has submitted a report prepared by Burton Engineering and Survey Company to demonstrate compliance with [Condition 11]. This report * * * indicates that the accompanying drainage ditch plan and calculations upon which ditch capacity is based are designed to accommodate the storm drainage requirements associated with development of two single family dwellings [in] Phase 1. According to * * * the written and diagrammatic material submitted by [Burton Engineering], a new drainage ditch conforming with the design plans will be constructed along the north side of Viewmont Drive to connect to an existing 18 inch storm drainage facility installed along the east perimeter of the Abbie Court subdivision.
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> "* * * * *
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> "* * * Based upon the testimony and evidence in the record that the drainage ditch plan provided by Burton Engineering is designed to accommodate additional stormwater runoff from the two lots [in Phase 1, and] in the absence of any direct evidence or testimony that these specific objectives are not accomplished by this plan, the Board [of Commissioners] concludes that the requirements of [YCLDO] 6.030(6) and Condition 11 have been met. * * *" (Emphasis added.) Record 11-12.

As we understand it, petitioners do not contend the measures proposed in the Drainage Plan are insufficient to satisfy YCLDO 6.030(6) with regard to the two lots in Phase 1. Rather, petitioners contend the county erred in not imposing a condition of approval specifically requiring

that the drainage ditch shown on the Drainage Plan be constructed prior to final plat approval. Petitioners argue that absent such a condition, there is no assurance the proposed drainage ditch will be built. See Neste Resins Corp. v. City of Eugene, 23 Or LUBA 55, 67 (1992) (if a limitation is necessary to assure that the approved development will comply with applicable standards, more than an expression of current intentions by the applicant is required).

Intervenor argues it is required to construct the proposed drainage ditch prior to final plat approval under YCLDO 11.030(1), which provides:

> "The County Engineer shall review the [final] subdivision plat and accompanying material to ensure that:
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> "A. All improvements required by this ordinance * * * have been completed and approved, or
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> "B. A performance agreement or improvement agreement has been submitted to the County Engineer pursuant to [YCLDO 1300] and approved by the Yamhill County Board of Commissioners."

The above quoted portions of the county's decision clearly indicate the county relied on the Preliminary Drainage Ditch Plan submitted by intervenor in determining that Phase 1 of the proposed subdivision complies with YCLDO 6.030(6) and Condition 11. In these circumstances, the Preliminary Drainage Ditch Plan effectively became part of the preliminary subdivision plat approved by county

order, and it was not necessary for the county to impose compliance with the Drainage Plan as a separate condition of approval.[12] See Friends of the Metolius v. Jefferson County, ___ Or LUBA ___ (LUBA No. 93-002, June 8, 1993), slip op 13, aff'd ___ Or App ___ (September 22, 1993) (where conditional use proposal included site, landscaping and building design plans, county approval is not required to be specifically conditioned on compliance with those plans). As part of the approved preliminary plat, the proposed drainage ditch must be constructed, or a performance agreement to construct it must be approved, prior to final plat approval for Phase 1. YCLDO 11.010; 11.030(1).

This subassignment of error is denied.

D. Road Condition

Petitioners argue the record clearly shows the surface condition of Viewmont Drive is inadequate for current traffic. Petitioners contend the county erred by not including a condition requiring improvements to Viewmont Drive in the challenged decision.

In the challenged decision, the county found that Conditions 8, 10 and 11 of the 1992 decision do not require intervenor to improve existing surface conditions on Viewmont Drive. Record 12.

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[12]We note that under YCLDO 5.010(1)(N), the subdivision preliminary plat is required to include "[e]xisting and proposed drainage patterns showing the direction and volume of surface water flow in sufficient detail to determine the effect of the drainage."

The 1992 decision resolved all issues related to preliminary plat approval other than determining compliance with YCLDO 6.030(6), 6.090 and 6.100, as required by Conditions 8, 10 and 11. None of these sections relates to traffic impacts or the condition of Viewmont Drive. Accordingly, this issue was not before the county below and is not properly before us.

This subassignment of error is denied.

The first, second and seventh assignments of error are denied.

The county's decision is affirmed.