

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

GILBERT PURDY, ROBERT SLOAT, RAY )  
JENSEN, MARK BARBER, JOHN TEPPER, )  
PAUL DIERKS, ROBERT WALTON, and )  
LAWRENCE WILKINSON, )  
Petitioners, )  
vs. ) LUBA No. 97-030  
CITY OF SHADY COVE, ) FINAL OPINION  
Respondent, ) AND ORDER  
and )  
JOSEPH BERTO, )  
Intervenor-Respondent. )

Appeal from City of Shady Cove.

Gilbert Purdy, Shady Cove, filed the petition for review and argued on his own behalf. Robert Sloat, Ray Jensen, Mark Barber, John Tepper, Paul Dierks, Robert Walton, and Lawrence Wilkinson represented themselves.

Larry L. Kerr, Shady Cove, filed a response brief on behalf of respondent.

Gregory S. Hathaway, Timothy R. Volpert, and Christopher C. Brand, Portland, filed a response brief on behalf of intervenor-respondent. With him on the brief was Davis Wright Tremaine. Timothy R. Volpert, and Christopher C. Brand argued on behalf of intervenor-respondent.

LIVINGSTON, Referee; HANNA, Chief Referee, participated in the decision.

AFFIRMED 06/30/97

You are entitled to judicial review of this Order.

1 Judicial review is governed by the provisions of ORS  
2 197.850.

1 Opinion by Livingston.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision of the city council  
4 approving a land partition.

5 **MOTION TO INTERVENE**

6 Joseph Berto (intervenor), the applicant below, moves  
7 to intervene on the side of the respondent. There is no  
8 opposition to the motion, and it is allowed.

9 **FACTS**

10 The subject property is a 3.34-acre parcel located in  
11 the city's Low Density Residential-20 (R1-20) and Airpark  
12 Commercial (A-C) zones. The property is subject to a non-  
13 exclusive easement for an airstrip in favor of Rogue Air,  
14 Inc. Record 165-67. The easement, which runs from  
15 northeast to southwest through the western half of the  
16 property, is approximately 140 feet wide. Record 55.

17 Intervenor applied to partition the property into three  
18 parcels. The proposed partition would create two flag lots,  
19 each with access by driveway over the airstrip.  
20 Intervenor's application was heard and approved first by the  
21 planning commission and then, on appeal, by the city  
22 council.

23 This appeal followed.

24 **MOTION TO DISMISS**

25 Intervenor moves to dismiss this proceeding on two  
26 related grounds: (1) Rogue Air, Inc., rather than

1 petitioners, holds the easement over the subject property  
2 and is adversely affected, and petitioners cannot assert the  
3 legal rights of the corporation; and (2) OAR 661-10-075(6)  
4 requires that a corporation or other organization must be  
5 represented by an attorney, and since petitioners are  
6 appearing pro se, their appeal must be dismissed.

7       ORS 197.830(2) establishes two requirements for  
8 standing to petition the Board: (1) a person must have  
9 filed a timely notice of intent to appeal; (2) that person  
10 must have appeared before the local government, special  
11 district or state agency orally or in writing. Miller v.  
12 Washington County, 25 Or LUBA 169, 172 (1993). There is no  
13 requirement in ORS 197.830(2) that a person be adversely  
14 affected by the challenged decision. We therefore reject  
15 intervenor's argument that because only Rogue Air, Inc.  
16 could be adversely affected, only Rogue Air, Inc. has  
17 standing to appeal.

18       Gilbert Purdy, Robert Sloat, Ray Jensen, Mark Barber  
19 and John Tepper all appeared below in their own right.  
20 Record 147-48. They joined to file a timely notice of  
21 intent to appeal to LUBA. Because they satisfied the two  
22 requirements of ORS 197.830(2), they have standing to  
23 appeal; and because they, rather than Rogue Air, Inc.,  
24 appealed to LUBA, they may appear pro se.

25       Paul Dierks, Robert Walton and Lawrence Wilkinson have  
26 not established that they appeared below, They are

1 dismissed as petitioners. Intervenor's motion to dismiss is  
2 denied as to Gilbert Purdy, Robert Sloat, Ray Jenson, Mark  
3 Barber and John Tepper.

4 **MOTION TO STRIKE**

5 Intervenor moves to strike Appendices A-2, A-7 and A-8  
6 from the petition for review on the ground they are not a  
7 part of the record. We agree that Appendices A-2, A-7 and  
8 A-8 are not part of the record, and we do not consider them.

9 **ASSIGNMENTS OF ERROR**

10 Petitioner's brief does not make assignments of error  
11 as such, but instead discusses alleged error in connection  
12 with four topics: planning, runway (airstrip) easement,  
13 ownership and runway hazard. Notwithstanding the formal  
14 deficiencies of the petition for review, when petitioner's  
15 arguments are stated clearly enough for the county and  
16 intervenor to respond, we may consider them. Eckis v. Linn  
17 County, 110 Or App 309, 311, 821 P2d 1127 (1991); Testa v.  
18 Clackamas County, 29 Or LUBA 383, 388 n6, aff'd 137 Or App  
19 21 (1995).

20 ORS 197.830(11)(c) requires that a petitioner include  
21 in the petition for review a statement of the issues the  
22 petitioner seeks to have reviewed. A party challenging a  
23 local land use decision must provide some particularized  
24 basis for showing it to be subject to remand or reversal.  
25 Opus Development Corp. v. City of Eugene, 141 Or App 249,  
26 256, 918 P2d 116 (1996). As we have often stated, it is not

1 our function to supply a petitioner's legal theories or to  
2 make a petitioner's case for that petitioner. Deschutes  
3 Development v. Deschutes Cty., 5 Or LUBA 218 (1982).

4 This Board can grant relief only if petitioner  
5 demonstrates that an applicable legal standard is violated  
6 by the challenged decision. Schellenberg v. Polk County, 22  
7 Or LUBA 673, 679 (1992); Lane School District 71 v. Lane  
8 County, 15 Or LUBA 150, 153 (1986). In their discussion of  
9 runway easement, ownership and runway hazard, petitioners  
10 fail to identify any applicable legal standards.<sup>1</sup>

11 In their discussion of planning, petitioners identify  
12 three legal standards: Shady Cove Comprehensive Plan (SCCP)  
13 "Policies for Economic Development" Nos. 4 and 5 and SCCP  
14 "Public Facilities Policies" No. 6.<sup>2</sup> However, petitioners

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<sup>1</sup>We note that our jurisdiction does not include the enforcement of an easement. Except as provided in ORS 197.540, which authorizes us to review a moratorium on land construction or development alleged to have been adopted in violation of the moratorium statute (ORS 197.505 to 197.540), our jurisdiction is limited to the review of "any land use decision or limited land use decision of a local government." ORS 197.825(1). Cole v. Lane County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 97-017, May 14, 1997), slip op 4.

<sup>2</sup>SCCP "Policies for Economic Development" No. 4 provides:

"The City of Shady Cove shall review the ownership patterns, plans and opportunities in the vicinity of the private airstrip on the westside of the city and assess its potential for future industrial, commercial or other airport-related development."  
(Original in upper case.)

SCCP "Policies for Economic Development" No. 5 provides:

"The City of Shady Cove shall work with land owners and developers to ensure that plan concepts and actual development plans are in accordance with the city's plans and zoning, and to ensure that the development will provide for adequate

1 do little more than quote the standards in the petition for  
2 review. Petitioners do not present a reviewable argument  
3 either that the standards should have been interpreted and  
4 applied in the challenged decision or that they have been  
5 violated.

6 The city's decision is affirmed.

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parking and circulation, be compatible with its surroundings,  
and be an asset to the community." (Original in upper case.)

SCCP "Public Facilities Policies" No. 6 provides:

"Subdivision of land rather [than] minor partitioning of  
individual parcels shall be encouraged in order to promote the  
orderly and logical development of future streets."