BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

TIMOTHY P. SPERBER,
Petitioner,

vs.

COOS COUNTY,
Respondent.

LUBA No. 2008-227

FINAL OPINION
AND ORDER

Appeal from Coos County.

Timothy P. Sperber, Coquille, filed the petition for review and argued on his own behalf.

No appearance by Coos County.

HOLSTUN, Board Member; RYAN, Board Member, participated in the decision.

BASSHAM, Board Chair, did not participate in the decision.

REMANDED 04/10/2009

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

Opinion by Holstun.

NATURE OF THE DECISION

Petitioner appeals conditions of approval imposed by the county on approval of a partition application.

FACTS

Petitioner owns property that is located outside of the City of Coquille's city limits but within the city's urban growth boundary (UGB). The property is zoned Urban Residential–2 (UR-2) by Coos County. Pursuant to Coos County Zoning and Land Development Ordinance (CCZLDO) Table 4.4-d, the minimum parcel size in the UR-2 zone for properties that lack community water and sewer service is one acre. Petitioner envisions a series of partitions of his property, to allow residential development on parcels with individual water and septic systems. Access to those parcels will be provided by Gary Sipe Road, which will be extended into the property as a series of partition plats are approved and recorded. Gary Sipe Road is to be constructed over a private access easement rather than a public right of way. Petitioner's first partition plat was recorded on December 17, 2007. Record II 99.[1] That partition plat created three parcels of 5.75, 6.06 and 51.67 acres and a short section of the Gary Sipe Road beginning at its intersection with Shelly Lane, a county road.

The challenged decision grants tentative partition plan approval for a second partition, to divide the 51.67 acre parcel that was created by the first partition into three parcels of 6.65, 19.54 and 25.48 acres. Record I 9. The partition also proposes to extend the Gary Sipe Road access easement. In this appeal, petitioner challenges four conditions of approval that were included in the county's decision. Petitioner also applied for a variance to

[1] The county submitted a two-volume record, both of which begin with page 1. We cite those records as Record I and II to distinguish between the two volumes.

county road standards that the county denied in a separate decision. Petitioner appealed that variance decision to LUBA. That appeal is pending. LUBA No. 2009-005.

Petitioner's partition application was initially approved by the county planning director, but the approval included a number of conditions of approval that petitioner objected to. Petitioner appealed the planning director's approval to the board of county commissioners (BCC). The BCC held a hearing at which petitioner believed his objections to the conditions of approval had been satisfied. At that hearing, the BCC voted to approve the partition application. However, when the BCC issued its final written decision, petitioner contends the conditions of approval that were adopted by the BCC's decision are not consistent with the agreement that was reached at the public hearing.

MOTION TO TAKE EVIDENCE OUTSIDE OF THE RECORD

Petitioner requests that LUBA consider certain evidence that is not included in the record of this appeal. Petitioner wants LUBA to consider that evidence in reviewing his assignment of error that the county treated petitioner's application differently from similar partition applications and in doing so violated Article I, Section 20 of the Oregon Constitution.

The county has not appeared to defend its decision in this appeal and therefore has not responded to the motion to take evidence outside of the record. The motion is granted.

FIRST ASSIGNMENT OF ERROR

The conditions of approval that are disputed in this appeal appear in the planning department staff report, which is attached to the BCC's decision. The decision states that the conditions of approval from the staff report are imposed "with the clarification identified" in the challenged decision by the BCC. We discuss each of the disputed conditions in turn.

A. Condition 1

The first condition of approval states:

> "Pursuant to CCZLDO Section 3.3.500([1]), the tentative plat must show the calculated acreages excluding the extension of Gary Sipe Road and any existing utility easements crossing the subject property." Record I 24.

As far as we can tell, the dispute under this subassigment of error is whether the acreages of the proposed parcels that are shown on petitioner's tentative subdivision base map should include the private roadway easement for Gary Sipe Road and any existing utility easements (petitioner's position) or whether the acreages of the proposed parcels shown on the base map should exclude the area of each parcel that is subject to those easements (the county's position).[2]

The submittal requirements for tentative subdivision maps include CCZLDO 6.5.250(1)(a), which provides in part that "[a]ll proposed tentative partition * * * and base maps shall comply with all applicable sections of this Ordinance." Under CCZLDO 6.5.250(3), applicants for partition approval must submit "[a] tentative partition * * * plat map and base map * * *." CCZLDO 6.5.250(3)(A)(i)(b) requires that the base map must show the following: "parcel area in acres or square feet[.]" Petitioner argues that because this language in CCZLDO 6.5.250(3)(A)(i)(b) does not say anything about subtracting easement acreages, it is clear (to petitioner) that the easement acreages are to be included in the parcel acreages shown on the base map, and need not be excluded.

CCZLDO 3.3.500 treats access and utility easements differently, depending on whether property is located inside a UGB or outside a UGB.[3] We understand the county to

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[2] This appears to be largely an academic dispute between petitioner and the county, since all of the proposed parcels would appear to significantly exceed the one-acre minimum parcel size in the UR-2 zone, without regard to how access and utility easements are treated in computing minimum parcel size.

[3] CCZLDO 3.3.500 provides as follows:

> "**Maintenance of Minimum Requirements.**
>
> "1. Within Urban Growth Boundary: No *lot area*, yard, offstreet parking and loading area or other open space which is required by this Ordinance for one use shall be used as the required lot area, yard or other open space for another use, such as *utility easements, access easements*, road and street right-of-ways or septic drainfields.

have found that for purposes of computing the minimum parcel area required by CCZLDO Table 4.4-b for the proposed parcels, and by extension computing the parcel sizes that must be shown on the base map, CCZLDO 3.3.500(1) applies because the property is located inside a UGB. As interpreted by the county, under CCZLDO 3.3.500(1) the area of the proposed parcels that will be devoted to utility easements and access easements must be deducted from the parcel's acreage shown on the base map.

We also note that CCZLDO 6.2.250 sets out access requirements for land divisions. CCZLDO 6.2.250(4) provides:

> "All private road right-of-way easements shall be part of a lot, parcel or designated common areas. *The area within the private easement can only be considered as part of a required minimum lot size pursuant to [CCZLDO] 3.3.500*. (Emphasis added).

CCZLDO 6.2.250(4) appears to state that with regard to private access easements, whether the area affected by the access easement can be counted toward meeting minimum lot size requirements is governed by CCZLDO 3.3.500. We do not know whether there is a similar section somewhere in the CCZLDO that addresses utility easements and makes reference to CCZLDO 3.3.500.

We understand petitioner to argue that CCZLDO 3.3.500(1) only applies to *use* of the property, and at this point he is not proposing any particular use of the property. Petitioner contends that when a specific use is proposed for each parcel, such as construction of a dwelling, all such requirements will have to be complied with. Therefore, petitioner argues, requiring that the parcel acreages shown on the base map must subtract the acreage of access and utility easements is inconsistent with CCZLDO 6.5.250(3)(A)(i)(b).

In rejecting petitioner's argument, the county adopted the following findings:

> "2. Outside Urban Growth Boundary: No lot area, yard, offstreet parking and loading area or other open space which is required by this ordinance for one use shall be used as the required lot area, yard or other open space for another use. This does not include utility easements, private road access easements or septic drainfields; but does include all public road and street right-of-ways." (Emphasis added.)

> "* * * CCZLDO Section 6.2.240(4) [sic should be 6.2.250(4)] states 'All private road right-of-way easements shall be part of a lot, parcel or designated common areas.'[4] CCZLDO Section 3.3.500(1) Maintenance of Minimum Requirements states 'No lot area, yard, off-street parking and loading area or other open space which is required by this Ordinance for one use shall be used as the required lot area, yard or other open space for another use, such as utility easements, access easements, road and street right-of-ways or septic drain fields.' The original staff report noted that the maps did not meet this requirement, but included the roadway acreage in the final amount of acreage in the partition parcels. Since this land division lies within the City of Coquille's UGB, it must meet requirements of Section 3.3.500(1). The Planning Department is willing to work with the applicants' surveyor if he needs help in determining how much acreage the roadways will cover. This is necessary in order to determine that the parcels will meet the minimum lot size. The gross and the net acreages shall be shown on the maps." Record II 4 (emphasis added).

Under *Church v. Grant County*, 187 Or App 518, 524, 69 P3d 759 (2003) and ORS 197.829(1), we may only overturn a local government's interpretation of its own ordinances if the interpretation is inconsistent with the express language, purpose, or policy of the ordinance.[5] The CCZLDO could be more clearly written. Stripped to its essence, petitioner contends that CCZLDO 3.3.500(1) only limits use of property and cannot be interpreted in conjunction with CCZLDO 6.5.250(3)(A)(i)(b) to require that the acreage shown on the base

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[4] For some reason the county did not set out the second sentence of CCZLDO 6.2.250(4) which was quoted above and states "[t]he area within the private easement can only be considered as part of a required minimum lot size pursuant to [CCZLDO] 3.3.500." As we have already noted, that omitted sentence seems to make it clear that whether the areas of parcels that are subject to access easements can be included in the area of a parcel for purposes of meeting minimum parcel size requirements is governed by CCZLDO 3.3.500.

[5] ORS 197.829(1) provides, in relevant part:

> "[LUBA] shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:
>
> "(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
>
> "(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
>
> "(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation[.]"

map for proposed parcels exclude any easements that cannot be considered in meeting the one-acre minimum parcel size required by CCZLDO Table 4.4-d.

We conclude that the county's interpretation easily survives the relatively deferential standard of review that is required by *Church*. While it is true that neither CCZLDO 3.3.500(1) nor CCZLDO 6.2.250(4) say anything about the parcel acreage to be shown on the base map required by CCZLDO 6.5.250(3), it is also true that CCZLDO 6.5.250(3)(A)(i)(b) does not specify whether the acreage of parcels shown on the base map must include (or exclude) portions of parcels that are subject to access or utility easements. Neither does CCZLDO 6.5.250(3)(A)(i)(b) say anything about whether portions of parcels that are affected by those easements can be considered in complying with minimum parcel size requirements for these urban area parcels. On that point, CCZLDO 6.5.250(3)(A)(i)(b) is at best ambiguous. The county apparently interprets CCZLDO 6.5.250(3)(A)(i)(b) in context with CCZLDO 3.3.500(A) to require that for purposes of the minimum parcel sizes required by CCZLDO Table 4.4-b, and for purposes of the acreage of parcels shown on the base map required by CCZLDO 6.5.250(3)(A)(i)(b), access and utility easements must be excluded. The county's interpretation has at least as much support in the text of the CCZLDO as petitioner's interpretation. We therefore defer to the county's interpretation.

This subassignment of error is denied.

B. Condition 9

The ninth condition of approval states:

> "The applicants must execute an agreement complying with the required improvements identified in Table 7.3 prior to submittal of the final plats." Record II 21.

The required improvements identified in Table 7.3 are the minimum road and street development standards within UGBs. Table 7.3 sets out a variety of minimum specifications for construction of roadways.

CCZLDO 6.5.400 concerns agreements for improvements and provides:

"Before the final plat may be approved, the partitioner or subdivider shall either:

"1 [I]nstall *required* monumentation, improvements and repair existing streets and other public facilities damaged in the construction of the subdivision or partition; or

"2. [E]xecute and file with the County Surveyor or Roadmaster, pursuant to directions below, an agreement between himself and the County." (Emphasis added).

CCZLDO 6.5.400 goes on to provide that if required road and other improvements are not to be completed before a final plat is recorded, an estimate of the cost of those improvements is required and a "Bond, Surety, Cash or other Security Deposit" is required to guarantee that the road improvements are completed. CCZLDO 6.5.400(2)(C).

Petitioner argues that CCZLDO 6.5.400 only requires that an applicant make improvements before a final plat is approved or file an agreement with the county to guarantee construction of such improvements if they are "required." According to petitioner, because he seeks approval of a partition rather than a subdivision, there are no "required" road improvements. Petitioner argues that construction of any road improvements that will be needed to develop the parcels that are created by the partition can be delayed until the time county approval is requested to develop the parcels.

CCZLDO 7.1.900 provides that road and street improvements "are required by this ordinance when the circumstances set forth in Table 7.1 exist." Table 7.1 is a Road Standards Policy Matrix. Under that matrix, although roads must be improved at the time of final *subdivision* plat approval, when the application is for a *partition* an access road need not be improved "in conjunction with [the] partition."[6] Instead, under Table 7.1 new roadways that are necessary to serve parcels in a partition approved after January 1, 1996 must be

[6] Under both state law and the CCZLDO, division of property into two or three parcels in a single year qualifies as a partition, whereas division of property into four or more parcels in a single year qualifies as a subdivision. ORS 92.010(8) and (16); CCZLDO 2.1.200.

improved "[b]efore a dwelling may be authorized" on a parcel created by such a partition. As far as we can tell, petitioner is correct that the matrix set out in Table 7.1 makes it clear that road improvements need not be constructed or bonded prior to final partition plat approval.

The challenged condition of approval from the staff report does require petitioner to construct or bond for the road improvements concurrent with the partition. As discussed above, however, the challenged decision states that the conditions of approval are imposed "with the clarification identified" in the decision. Although the BCC's decision seems to recognize petitioner's challenge to Condition 9, it does not appear to address that challenge. Record II 4-5. The minutes of the November 25, 2008 hearing seems to say that the county agreed with petitioner that the road improvements would not be required at the time the final partition plat is approved and recorded. But nothing in the text of the BCC's written decision suggests that Condition 9 was modified to relieve petitioner of the obligation of constructing, or agreeing and bonding to construct, the improvements to Gary Sipe Road that will be necessary to provide access to the approved parcels, at the time of final plat approval.

It appears that the county intended to clarify that under Condition 9 petitioner would neither be required to construct improvements to Gary Sipe Road, nor provide an agreement and bond to do so at the time of final plat approval. But the challenged decision simply does not include that clarification.[7]

This subassignment of error is sustained.

C. Condition 10

The tenth condition of approval states:

> "The applicants must comply with the requirements of the other County Departments and Agencies. Please see the attached letters." Record II 21.

[7] Petitioner stated to LUBA that if Condition 9 had been clarified as requested, this appeal would not have been filed.

Petitioner argues that this condition of approval is ambiguous and inadequate to inform him of what is required of him in order to obtain final approval of his partition. The county's findings regarding petitioner's challenge to this condition of approval state:

> "During the review of all land divisions, the application, supplemental documentation and maps are sent for review to the County Highway Department, the County Surveyor's office, and the County Assessor's office. These agencies review the maps and determine if they comply with regulations over which their offices have jurisdiction and supply the Planning Department with comments. Rather than being repetitive, the Planning Department included these comments as conditions of approval, which must be met to the satisfaction of the various departments. Copies of these reports were provided to the applicants with their copy of the staff report." Record II 6.

While petitioner agrees that some of the comments in the attached letters are routine matters that are relatively straightforward and easily complied with, he argues some of the requirements are confusing and ambiguous. Petitioner argues the county road department imposed the following requirements:

> "(1) a traffic impact analysis for a three-way partition (which was deferred), (2) utility easements, (3) the posting of a bond for improvements under [CCZ]LDO 6.5.400, (4) vaguely that the Sperbers meet all components of Article 7.3 and Table 7.1 aspects, (5) construction drawings for roadways, (6) construction of an access at the junction of Gary Sipe Road and Shelly Lane, and (7) construction of a stub-street." Petition for Review 14-15.[8]

We understand petitioner to contend that Condition 10, which requires petitioner to comply with the road department requirements, "is insufficient to enable a reasonable person to identify [what is] required to obtain approval for a final partition plat."

We assume the requirements identified by the county road department were imposed to ensure that development of the partition satisfies applicable CCZLDO requirements. Petitioner is correct that such conditions must be stated clearly enough to allow a reasonable person to understand what is being required. *Sisters Forest Planning Committee v.*

[8] These requirements are set out in letters from the county road department dated July 2, 2008 and October 13, 2008.

Deschutes County, 198 Or App 311, 315, 108 P3d 1175 (2005). We turn to petitioner's specific complaints.

1. Traffic Impact Analysis

The road department's July 2, 2008 letter states that a traffic impact analysis (TIA) would be required.[9] But the road department's subsequent October 13, 2008 letter makes it clear that a TIA will not be required in connection with the current partition, although one may be required in the future.[10] We will assume the statement regarding the TIA in the latter letter applies in place of the earlier statement. There is nothing unclear about what is required; and a TIA will not be required for this partition, although the road department believes one may be required for future partitions. There is no error regarding the TIA.

We reject petitioner's challenge to this condition.

2. Utility Easements

The road department's July 2, 2008 letter states:

> "Utility easements shall be provided for at least 15 feet wide, except for utility poles tieback easements which may be reduced to 6' width." Record I 28.

Although the condition does not identify the CCZLDO provision it is imposed to implement, the condition is almost a word-for-word restatement of CCZLDO 6.2.300.[11] This condition

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[9] That letter states:

> "This area of development has been a continued development over the years so in order to deal with safety aspects of the development and article 6.1 section 6.1.100 subsection 9, that a TIA will be required to ensure that costs of providing rights of ways and improvements for vehicular and pedestrian traffic, utilities and public areas serving new developments be borne by the benefitted persons rather than by the people of the county at large. * * *" Record I 28.

[10] That letter states:

> "At this time a TIA * * * will not be required; however, if this property is divided further, one may be requested in order to determine necessary road development." Record I 30.

[11] CCZLDO 6.2.300 provides in part:

> "Easements. Easements may include but are not limited to the following:

is clear enough for petitioner to determine what will be required when and if utilities are installed.

We reject petitioner's challenge to this condition.

3. Bond for Improvements

The road department's July 2, 2008 letter could be read to require that petitioner either construct the proposed extension of Gary Sipe Road prior to final partition plat approval or submit an agreement and bond to do so at the time the final partition plat is approved and recorded.[12] As we have already determined, those requirements do not apply to partitions under CCZLDO 7.1.900 and Table 7.1. That county road department requirement must be eliminated or amended so that it does not require roadway improvements that are not required under the CCZLDO for final partition plat approval.

We sustain petitioner's challenge to this condition, in part.

4. Meet All Components of Article 7.3 and Table 7.1

We assume petitioner is objecting to the following requirements in the July 2, 2008 county road department letter:

> "The applicant's partition is located within the UGB of Coquille, so all components of Article 7.3 will need to be met, in addition the 7.3 table defines what minimum road standards will be required.
>
> "* * * * *

> "* * * * *
>
> "2. Utility Easements. Easements including but not limited to sewers, water mains and electrical lines shall be at least 15 feet wide, except for utility pole tieback easements which may be reduced to 6 feet in width.
>
> "* * * * *."

[12] The July 2, 2008 county road department letter states:

> "Prior to final plat being approved conditions in section 6.5.400 [must] be met and an agreement [must] be executed." Record I 28.

"All aspects of table 7.1 of the [CCZLDO] must be met." Record I 28.

CCZLDO Article 7.3 and table 7.3 set out the county road development standards for urban areas. As we have already noted, CCZLDO Table 7.1 is a matrix that is used to identify what kinds of road improvements are required in certain specified situations. Although we have already determined that other conditions imposed by the BCC and the road department are inconsistent with the Table 7.1 matrix in requiring that roadways be improved before the final partition plat is recorded, or that an agreement and bond to do so be submitted before final plat approval, there is nothing in the above conditions that is unclear or difficult to understand. We reject petitioner's suggestion to the contrary.

We reject petitioner's challenge to this condition.

5. Construction Drawings for Roadways

We assume petitioner's objection is to the following condition in the October 13, 2008 letter:

> "If this proposal is approved it must comply with [CCZLDO] Article 7.1 General Provisions, Article 7.3 Urban Road Standards (City UBG's) and *Section 6.5.350, which requires the submittal of construction drawings prior to any roadway or extension of roadways*." Record I 30 (emphasis added).

Again, the county erred by requiring that petitioner construct the proposed extension of Gary Sipe Road before the final plat could be approved or submit an agreement and bond to do so. But that error aside, CCZLDO 6.5.350 simply requires that construction drawings be submitted and approved before roadways are constructed. There is nothing unclear about CCZLDO 6.5.350.

We reject petitioner's challenge to this condition.

6. Construction of an Access at the Junction of Gary Sipe Road and Shelly Lane

We assume petitioner's objection is to the following condition:

> "The minimum acute angle at the junction of Gary Sipe Road according to table 7.3 is 60 degrees. For safety reasons, because of the topography of this site, this acute angle at this junction shall be no greater than 60 degrees,

> asphalt ingress and egress of 50 by 20 feet for a safe distance and when traffic is trying to negotiate the turn entering and exiting Gary Sipe Road from Shelly Lane. During the construction of the development on Gary Sipe Road when longer, wider than normal traffic such as larger equipment is used for the transport of materials to this site, these guidelines must be followed for the safe travel for all traffic using this area. According to CCZLDO 7.3 the maximum grade shall be 16% on this road." Record I 30.

We are not engineers. But if we are reading the above condition correctly, it requires that the angle at the junction of Gary Sipe Road must be exactly 60 degrees. The rest of the condition also seems clear enough, except for the requirement for "asphalt ingress and egress of 50 by 20 feet for a safe distance and when traffic is trying to negotiate the turn entering and exiting Gary Sipe Road from Shelly Lane." That requirement may be clear to the person who wrote it, but we do not understand what would be required to comply with it. On remand, the county road department needs to clarify that requirement.

Petitioner's objection to this condition is sustained, in part.

7. Construction of a Stub-Street

We assume petitioner's objection is to the following condition:

> "A stub-out (stub-street) at the end of Gary Sipe Road must also be constructed. (Article 7.1.550 (4)(26) of the CCZLDO). A portion of a street or cross access drive used as an extension to an abutting property that may be developed in the future." Record I 30.

As we have already explained, petitioner intends to gradually extend Gary Sipe Road to serve the parcels that were created by the first partition, the parcels created by this second partition and the parcels that will be created by future partitions. It seems likely to us that the above condition is intended to advise petitioner that when approval is requested for the final partition, a stub-street will be required to connect Gary Sipe Road to abutting property that is not owned by petitioner. The condition as written makes no sense to us as a condition of this partition approval. But we may be missing something. On remand the county should more clearly explain its stub-street requirement or remove the requirement.

This objection is sustained.

Petitioner's objections to Condition 10 are sustained, in part.

D. Least Suitable Areas Condition

Petitioner argues that an unnumbered condition of approval was also imposed without proper authority. The condition states:

> "All least suitable areas according to the Coos County Comprehensive [Plan] Map must be shown on the base map." Record I 31.

Petitioner argues that there is nothing in the CCZLDO that authorized the county to impose this condition. In the challenged decision, the county explains:

> "[CCZLDO] 6.5.250(3)(A)(ii)(e) requires the topography of the property be shown on the base map; (e) specifically refers to 'identified geologic hazards and other features affecting development.' The areas of 'least and less suitable for development' are considered a feature affecting the development of the property. The areas of 'least suitable for development' are defined as lands having some development constraints related to the physical carrying capacity, which will result in higher development costs than other lands. This definition recognizes that any parcel of land has some development potential if the appropriate development safeguards are taken and the resulting capital expenditures are made. The subject property is included on the City of Coquille UGB Land Suitability Map as Least and Less Suitable and was adopted as part of the Coos County Comprehensive Plan. *The area noted as 'least and less suitable for development' has already been included on the approved base map and was not included as a condition of approval*." Record II 3-4 (emphasis added).

The dispute between petitioner and the county regarding the condition of approval, assuming it in fact is a condition of approval, is not entirely clear to us. As discussed earlier, the challenged decision imposes the conditions of approval from the staff report "with the clarification identified." It appears that the decision takes the position that the condition of approval is not necessary because the least and less suitable areas have already been identified on the base map. We understand petitioner to argue that he only included those areas under protest and that he should not have been required to include them. Presumably he intends to remove them if he prevails in this subassignment of error.

Petitioner argues that the CCZLDO 6.5.250(3)(A)(ii)(e) refers to "features" affecting development and that being identified as least or less suitable areas on a comprehensive plan

map is not a "feature" affecting development. According to petitioner, features only include natural features such as topography, bodies of water, and geologic hazards.

We agree with the county that the term "other features affecting development" is broad enough to allow it to require that areas that are subject to the comprehensive plan "least and less suitable designations" be shown on the base map. Those comprehensive plan designations are based on precisely the type of natural features petitioner argues CCZLDO 6.5.250(3)(A)(ii)(e) is restricted to. The hyper-technical and narrow reading of CCZLDO 6.5.250(3)(A)(ii)(e) that petitioner advocates is not required by the language, purpose, or policy of CCZLDO 6.5.250(3)(A)(ii)(e). We agree with the county that the language "other features affecting development" can encompass both the features themselves that affect development and comprehensive plan map designations that are based on such features. The purpose and policy of CCZLDO 6.5.250(3)(A)(ii)(e) is presumably to alert purchasers of the parcels that are created by the challenged partition that the parcels have features that may make them difficult to develop. The condition furthers and is consistent with such a purpose and policy.

Finally, petitioner argues the county cannot require that he show least suitable areas on the base map because the county has not incorporated those mapping designations from the comprehensive plan into the CCZLDO. ORS 197.195(1).[13] The approval standard at issue in this assignment of error is CCZLDO 6.5.250(3)(A)(ii)(e), not the comprehensive

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[13] The county's decision concerning petitioner's partition qualifies as a limited land use decision, as that term is defined by ORS 197.015(12). ORS 197.195(1) provides:

> "A 'limited land use decision' shall be consistent with applicable provisions of city or county comprehensive plans and land use regulations. Such a decision may include conditions authorized by law. Within two years of September 29, 1991, cities and counties shall incorporate all comprehensive plan standards applicable to limited land use decisions into their land use regulations. A decision to incorporate all, some, or none of the applicable comprehensive plan standards into land use regulations shall be undertaken as a post-acknowledgment amendment under ORS 197.610 to 197.625. *If a city or county does not incorporate its comprehensive plan provisions into its land use regulations, the comprehensive plan provisions may not be used as a basis for a decision by the city or county or on appeal from that decision.*" (Emphasis added.)

plan map showing least suitable areas. The county's decision is not inconsistent with ORS 197.195(1).

Petitioner's objection to this condition is denied.

The first assignment of error is sustained, in part.

SECOND ASSIGNMENT OF ERROR

Petitioner argues that the county violated Article I, section 20 of the Oregon Constitution, which provides:

> "No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which upon the same terms, shall not equally belong to all citizens."

Petitioner's entire constitutional argument is that his partition application was treated differently in some ways than four other partition applicants.

Arbitrary application of facially neutral laws could implicate Article I, Section 20. *In re Conduct of Gatti*, 330 Or 517, 534, 8 P3d 966, 976 (2000) (citing *State v. Clark*, 291 Or 231, 239, 630 P2d 810 (1981)). However, demonstrating that the county has decided different partition applications differently falls far short of making out a meritorious Article I, Section 20 claim. That is particularly the case where there are factual differences in those applications that could easily explain the identified different treatment.

Of the four other partitions identified by petitioner, three concerned rural property located outside the UGB. The county appears to be more concerned about how urban property is developed, where development is encouraged at higher development densities, than it is with development of rural properties, where development is not generally encouraged and generally occurs at much lower densities. Those lower densities presumably provide more options for avoiding natural features that may complicate development.

One of the other properties identified by petitioner is located in an urban unincorporated community and, like petitioner's property, is zoned UR. Record I 62-69. But that property is only one-half acre in size, and the partition was a relatively straightforward

division of that property into two parcels. That partition was not one of an anticipated series of partitions that could potentially create a large number of parcels and extend a road over steep terrain to serve those parcels. Only one of the other partitions appears to be the first of a series partitioning and, as previously noted, is not located inside a UGB. The parcel that apparently remains to be divided again in the future in that case includes only 11 acres. Moreover, at this point, all of the parcels in that partition have access directly onto an adjoining road and no new access easement is being proposed. None of the four other partitions identified by petitioner is proposing the construction of a new road that will serve many parcels or faces the construction challenges that petitioner's extension of Gary Sipe Road will face.

It is clear that the county is somewhat concerned that petitioner proposes to divide his property into a significant number of parcels and if petitioner's series of partitions are not planned carefully the owners of those lots could encounter problems when the time comes to develop those parcels and the roadway that will be needed to serve the parcels. That does not mean the county can apply county land use laws to petitioner in a way that is inconsistent with the language of those county land use laws. But the county's concern that petitioner's property should develop in a way that results in parcels that are developable and adequately served by access roads and needed utilities could easily explain the additional attention that the county paid to petitioner's proposal, as well as the different requirements that were imposed.

Petitioner's equal privileges and immunities argument is without merit.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

Petitioner argues that the county overcharged him for processing his partition application. According to petitioner, the standard fee for a partition application is $1,800, but the county spent additional time on his application and billed him an additional $2659.72.

Petitioner argues that there was no need to spend so much time on his application, particularly since he had recently filed a similar partition application. Petitioner further alleges that the county spent the additional time on his application just to make things difficult for petitioner.

Petitioner does not explain what basis or authority he believes LUBA has to remedy the alleged overcharging. The only CCZLDO provision cited by petitioner is CCZLDO 1.3.900(1) which provides, in part:

> "For the purpose of partially defraying expenses involved in processing permits, land divisions and other applications and zoning authorizations, the Planning Department shall collect fees as established by the Board of Commissioners."

Petitioner was charged an initial fee of $1,800 and an additional $2,659.72 to reflect actual time the planning department spent on the application, for a total of $4,459.72. The record includes a detailed breakdown of the time the planning department spent on petitioner's partition application. Record II 103-04. Petitioner's primary compliant is that the county spent much less time on his first partition application (25 hours) and should not have had to spend any more time on the current application. Petitioner contends the county certainly should not have had to spend the 61 hours that it ultimately spent on his second partition application.

We are not sure how to approach this assignment of error. We do not understand petitioner to challenge the county's claim that it actually spent the time indicated on the detailed breakdown in the record or that the total time the planning department spent adds up to 61.41 hours. Petitioner's contention is that much of the time spent was unnecessary.

While we cannot be sure, a good bit of the time spent by staff seems to have been spent responding to objections petitioner expressed regarding initial staff positions. Some of that time was spent working out disagreements petitioner and the planning department had about what information should be required to make petitioner's application complete and

responding to objections petitioner had about early positions the planning department took. All of the expenses incurred in resolving those matters seems entirely legitimate to us. At the time petitioner's second partition application was pending, petitioner had already appealed two prior county decisions to LUBA. He has now filed two more. The county may simply have felt that it needed to be more careful in processing petitioner's second partition application to improve the chances that its decision would be sustained in the event of an appeal to LUBA. Any reasonable part of the $4,459.72 total cost that might be attributable to such concerns also seems entirely legitimate. In addition, as we have already noted, it is apparent that the county is concerned that it avoid making mistakes in approving the early partitions in petitioner's planned series of partitions that might lead to development complications later, complications that might be difficult and expensive to correct as later partitions in the series are submitted. For all of these reasons, we are not persuaded by petitioner's argument that the county incurred expenses in processing petitioner's second partition application that were improperly charged to petitioner.

The third assignment of error is denied.

The county's decision is remanded.